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THE

METROPOLIS

LOCAL MANAGEMENT ACTS,

WITH

INTRODUCTION, NOTES, AND AN APPENDIX,

CONTAINING

STATUTES INCORPORATED WITH THE METROPOLIS LOCAL MANAGEMENT ACT, 1855,

OR RELATING TO

THE FUNCTIONS OF THE BOARDS AND VESTRIES THEREBY CONSTITUTED.

BY

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ONE OF THE METROPOLITAN POLICE MAGISTRATES.

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INTRODUCTION.

THE principal Acts contained in this volume, and which form the basis of the present work, are the 18 & 19 Vict. c. 120, for the better Local Management of the Metropolis, and the three Amending Acts, the 19 & 20 Vict. c. 112, the 21 & 22 Vict. c. 104, and the 25 & 26 Vict. c. 102; and other statutes either expressly incorporated with the first-named Act, or having special reference to the powers and duties of the boards and vestries constituted by it, are added by way of Appendix. The object of this publication is to elucidate the construction of those Acts, for which purpose the reported decisions of the courts upon such of their provisions as have received judicial interpretation, and upon analogous enactments in other statutes, are collected in the notes. Attention is also directed to those provisions of the original Act which experience had shown to be defective, and to the amendments embodied in the Acts which were subsequently passed. It may well be supposed that an Act of Parliament which gave a municipal organization to the extensive districts described in its schedules, with a rental at the time of its passing (exclusive of the city) amounting to 9,011,220*l.*, and a population of 2,233,108 souls, did not remain exempt from the ordinary litigation attending extensive legislative changes. But to understand the causes which led to the passing of that important measure, and to appreciate its results, it will be desirable, in the first instance, to make some reference to the laws under which the management of the metropolitan districts as regards

their sewerage and paving, their improvements, and other subjects of local administration, had previously been conducted.

The limits of the metropolis, as defined by that Act, include the City of London, and the several parishes and places enumerated in the first three schedules appended to it; and the definition of the City of London is that given by the City Sewers Act, the 11 & 12 Vict. c. 163. The city and liberties of London consist of the city within the walls and without the walls, containing together an area of about 723 acres. Commissions of sewers were issued to the civic authorities from an early period. It is recorded that a commission was, on the complaint of Henry de Lacy, Earl of Lincoln, directed to the Mayor and Sheriffs of London in the thirty-fifth year of Edward I., requiring them to scour and clear the River Fleet (*a*). The 19 Car. 2, c. 3, for rebuilding the City of London after the Great Fire, vested in the Common Council certain duties relating to sewerage, and empowered that body to appoint persons under the common seal of the Corporation to design and set out sewers, drains, and vaults within the city and liberties. Other Acts were subsequently passed relating to the sewers of the city, viz., the 11 Geo. 3, c. 29, the 33 Geo. 3, c. 75, and the 4 Geo. 4, c. 114. Those Acts, which contained provisions for paving, lighting, and cleansing, and for preventing and removing obstructions and annoyances, were repealed by the above-mentioned Act, the 11 & 12 Vict. c. 163, which has since been amended and extended by the 14 & 15 Vict. c. 91. It is under those Acts that the City Commissioners of Sewers now

(*a*) See "Law of Sewers," by Serj. Woolrych, 2nd ed. p. 2.

exercise their powers. By the 7th section, the Mayor, Aldermen, and Commons are empowered from time to time to appoint by deed under their common seal such persons as they shall think fit for carrying the Act into execution. Under it the sole power of making, repairing, and altering sewers, drains, and vaults, and of paving, lighting, cleansing, and improving the streets within the city, as defined by the Act, is vested in the Mayor and Commonalty, and Citizens of London, to be executed by Commissioners to be nominated and appointed by the Mayor, Aldermen, and Commons, in Common Council assembled, under the common seal. This Act came into operation on the 1st January, 1849, and the clause limiting its continuance to two years, and thence to the end of the then next Session of Parliament, was repealed by the 14 & 15 Vict. c. 91. The sole power conferred by it, of making and maintaining sewers within the city to the Corporation, to be exercised in the manner described, must now be regarded as subject to the alteration introduced by the 18 & 19 Vict. c. 120, by which main sewers have become vested in the Metropolitan Board of Works. Various powers for the regulation of streets and prevention of nuisances are contained in the City Police Act, 2 & 3 Vict. c. 94. The Corporation also, from an early period, made ordinances embodying regulations with respect to building, and legislative provision was made on the same subject in the Act 19 Car. 2, c. 3, and in subsequent statutes. The present Metropolitan Building Act is the 18 & 19 Vict. c. 122, but certain provisions of the former statutes, 14 Geo. 3, c. 78, and 7 & 8 Vict. c. 84, are still unrepealed (*b*).

(*b*) See the Act 18 & 19 Vict. c. 122, *post*, in the Appendix.

Important administrative functions affecting river-side property were also exercised by the Corporation of London, in connection with the Conservancy of the River Thames. The Lord Mayor was by an ancient grant from the Crown Conservator of the Thames, within the Port of London (*a*), and the Corporation claimed to be entitled to exercise rights of ownership over the bed and soil of the river. This claim, which was contested by the Crown, became the subject of a suit in Chancery, instituted by the Attorney-General against the Corporation for the purpose of determining the rights of that body and of the Crown in relation to the bed and soil of the river, and its shores within the flux and reflux of the tide. The suit was brought to a close by an agreement made in the year 1856, by virtue of which, and of another agreement of the 24th February, 1857, a grant of the estate and interest of the Crown was made to the Corporation, in consideration of their paying annually to the Commissioners of Woods and Forests one-third of the monies, rents, and proceeds which they might receive in respect of sales, leases, grants, or licences for docks, piers, &c., in or upon the bed of the river, or of encroachments, embankments, or inclosures, on or near to it, and of their applying the residue to the improvement of the navigation. That portion of the bed of the river situate in front of lands, &c. belonging to the Crown, or which were the property or in the possession of any Government department, was excepted from the grant. The Thames Conservancy Act, the 20 & 21 Vict. c. 147, gave effect to this arrangement, and vested in the Conservators appointed by virtue of its provisions all the estate of

(*a*) Between Staines in Middlesex, and Yuntleet in Kent.

the Corporation and of the Crown in the bed and soil of the river, except the portion referred to above reserved to the Crown, and transferred to the same body all such powers and authorities as were theretofore vested in the Crown or Corporation in relation to the conservancy of the river. The Metropolitan Commissioners of Sewers, acting under the 11 & 12 Vict. c. 112, considered that that Act empowered them to execute works on the bed and foreshore of the Thames, without obtaining the permission of the Thames Navigation Committee, the body charged with the exercise of the chief powers of the Corporation, relating to the conservancy of the river, and when they required to execute such works they did not apply for leave, but merely gave notice to the Committee of their intention to commence them. The Committee, however, claimed the right of giving or withholding permission, and required that the works should be executed under the supervision of the water bailiff, one of their officers; and there is little doubt that their permission was necessary before any such works could be executed. At present the previous approval of the conservators is clearly requisite before any works on the bed or foreshore, which may affect the navigation, can be carried out, and in a recent case (*b*) the want of such approval was held to render the proceeding a wrongful one. The Thames Embankment Act, 25 & 26 Vict. c. 93, contains special provisions respecting works on the foreshore, which, however, only apply to that undertaking. As regards its internal government, the administration of local matters within the city of London has for a con-

(*b*) *Brownlow* v. *Metropolitan Board of Works*, vol. 31, L. J. (N. S.) Q. B. p. 140.

siderable period rested on a basis which has practically secured for its inhabitants a substantial representation of their interests and wishes. This was pointed out in the Report of the Commissioners appointed in 1853 to inquire into the state of the Corporation (*a*), and they ascribe this result in a great measure to the mode in which the Common Council is elected. But these advantages were confined to the narrow area included within the city proper, and the metropolitan districts beyond those limits were, until the introduction of the Metropolis Local Management Act, for the most part excluded from their operation.

Those extensive districts which were without the city had no general municipal organization, and were for the most part wholly unconnected with each other. Various statutes from time to time defined "the metropolis" for the specific purposes for which they were passed. The earliest example of such a district was that included within the weekly bills of mortality, which were originally weekly reports or returns by the parish clerks of London, relative to christenings and burials. They are said to have originated in 1562, and additional parishes were from time to time included within them, until they at length comprised the ninety-seven parishes within the city walls, the seventeen parishes without the walls, twenty-four out-parishes in Middlesex and Surrey, and ten parishes in Westminster (*b*). In addition to the general statutes affecting the parishes without the city, and within the present metropolitan limits, a large proportion of them were governed by local Acts, of which there are

(*a*) See Report, with minutes of evidence, and Appendix (1854), p. 12.

(*b*) See *Pulling*, "Laws of London," p. 264.

several hundred, presenting great diversity in their objects and provisions. The sewerage of the larger portion of those districts was under the control of commissioners appointed under the 23 Hen. 8, c. 5. The commissions were seven in number, viz., for Westminster and part of Middlesex, the Tower Hamlets, Saint Katherine's, Poplar and Blackwall, Holborn and Finsbury, Surrey and Kent and Greenwich. They were all subject to the general statutes concerning sewers, and several of them had obtained special Acts for extending their powers. The general statutes of sewers applicable to those commissions were the 23 Hen. 8, c. 5 (*c*), the 3 & 4 Ed. 6, c. 8, the 13 Eliz. c. 9, the 7 Anne, c. 10, and the 2 Wm. & Ma. sess. 2, c. 8. To these must be added the 3 Jas. 1, c. 14, subjecting to the commission of sewers the walls, ditches, &c. and watercourses within two miles from the city of London, which waters had their course and fall into the Thames; and the 2 Wm. & Ma. sess. 2, c. 8, providing that all new sewers made within London and Westminster and the other places named at any time since the twelfth year of the reign of Charles the Second should be subject to the jurisdiction of the commissioners. The Middlesex commissions were expressly exempted from the operation of the General Sewer Acts, the 3 & 4 Will. 4, c. 22, but the provisions of that enactment applied to those on the south side of the Thames, viz., for Surrey and Kent and Greenwich; and by the latest of the local Acts relating to one of the commissions in Middlesex, viz., the Westminster, the 10 & 11

(*c*) See reference to earlier statutes concerning sewers, Serj. Woolrych's "Law of Sewers," 2nd ed., p. 5, *et seq.*

Vict. c. 70, numerous provisions of the general statute were by express reference and incorporation made applicable to that commission, notwithstanding the exception referred to. The commissions which had obtained local Acts were those for Westminster, the Holborn and Finsbury, and Surrey and Kent. As many important questions affecting the rights of the present boards and vestries in relation to sewers, the liabilities of private parties with reference to sewerage works, the rights of creditors on the rates and other matters from time to time present themselves and necessitate a reference to those statutes, it will be convenient to enumerate them, and briefly to advert to the more important of their provisions. The local and personal Acts relating to the Westminster commission were the 47 Geo. 3, c. 7, the 52 Geo. 3, c. 48, and the 10 & 11 Vict. c. 70; those applicable to the Holborn and Finsbury commission were the 18 Geo. 3, c. 66, and the 54 Geo. 3, c. 219; and the Acts relating to the Surrey and Kent Commission were the 49 Geo. 3, c. 183, the 50 Geo. 3, c. 144, 53 Geo. 3, c. 79, and the 10 & 11 Vict. c. 217. The 47 Geo. 3, c. 7, recited the 3 Jas. 1, c. 14, enacting that all sewers, &c., within two miles from the City of London having their course and fall into the Thames, should be subject to the commission, and also recited the 2 William & Mary, c. 8, rendering subject to the commission all new sewers made in any of the parishes, &c. enumerated, since the twelfth year of the reign of Charles II.; and then enacted that all "walls, ditches, sewers, &c.," west of the City of London extending to and including a watercourse dividing the parishes of Chelsea and Fulham, including the several parishes enumerated, having their course and fall into

the Thames, should be fully subject to the commissioners of sewers; and it gave the commissioners increased powers for the execution and control of works, and in other respects. The 52 Geo. 3, c. 48, amongst other things, gave the commissioners certain powers for the levying of equal rates; and the 10 & 11 Vict. c. 70, extended the jurisdiction of the commission over all places named or to be named in it, whether or not the tide ebbed and flowed therein; and gave the commissioners additional powers for the construction of works, for enforcing the construction of sewers by private parties, imposing on such parties the cost of works, for compelling house drainage, and for making rates and other objects. There was also a special Act obtained by the Westminster commissioners for the formation of a sewer at Bayswater, 4 & 5 Will. 4, c. 96. This sewer was constructed by means of money borrowed, to be repaid by instalments within twenty years. The whole of the money has been repaid. By the 18 Geo. 3, c. 66, the Corporation of London were empowered to construct a new sewer within the prebendal estate of Halliwell and Finsbury, and so much of it as was in the county of Middlesex was placed under the Holborn and Finsbury commissioners, and in consideration of the benefit accruing to the districts under their charge, those commissioners were directed to pay into the Chamber of the City of London the annual sum of 150*l.* for ever; and it contained other provisions relating to the sewerage of the districts, the mode of making rates, and other matters. By the 49 Geo. 3, c. 183, the Surrey and Kent commissioners were, amongst other things, empowered to make new sewers within the parishes named in the Act, to purchase lands mentioned in the schedule,

by agreement or compulsorily, and to borrow, on the security of the rates, sums not exceeding 15,000*l.* The 50 Geo. 3, c. 144, directed them to keep separate accounts of the charges of making new sewers in particular parishes, and fixed the proportions in which the expenses should be paid; it extended the jurisdiction of the commissioners to other parishes; and they were empowered to borrow not exceeding 60,000*l.* The 53 Geo. 3, c. 79, authorized the commissioners to borrow a further sum of 40,000*l.*, and provided for the division of districts; and it gave compulsory powers for the acquisition of lands enumerated in the schedule. The 10 & 11 Vict. c. 217, applied all the powers of the former Acts to the extended districts enumerated in the schedule, and gave increased power for enforcing contribution to the cost of sewers, compelling house drainage and other things.

With respect to the paving of the districts under consideration and the suppression of nuisances, it may be here stated that in the year 1817 was passed the Metropolitan General Paving Act, the 57 Geo. 3, c. 29, commonly known as Michael Angelo Taylor's Act, which consolidated and reduced into a species of system many of the provisions relating to paving and the regulation and improvement of streets which were contained in the special Acts of particular parishes. It was expressly incorporated in many of the special Acts which were subsequently passed, and where there was no such express incorporation the commissioners or trustees exercised some of the powers conferred by it in conjunction with those given by the local Acts under which they were appointed. The operation of that Act was limited to the streets and public places then paved or which might

thereafter be paved within the Cities of London and Westminster, and Borough of Southwark, and other parts included within the weekly bills of mortality, and within the parishes of St. Pancras and St. Marylebone, with certain specified exceptions. Many of the parishes comprised in the present metropolitan limits were neither within the bills of mortality nor included among the parishes specially mentioned in that Act, but the 25 & 26 Vict. c. 102, s. 73, has now extended many of its provisions to the whole of the metropolitan districts (*a*). The Crown estate, near the Regent's Park, Regent Street, and some adjacent localities and certain parts contiguous to the Houses of Parliament were subject to the jurisdiction of a special body of commissioners acting under the 5 Geo. 4, c. 100; but by the 11 & 12 Vict. c. 112, all powers in relation to sewerage which had been vested in those commissioners were transferred to the Metropolitan Commissioners of Sewers; and by a subsequent Act, the Crown Estate Paving Act, 14 & 15 Vict. c. 95, the district was divided, and their powers were distributed between a new body of commissioners constituted by that Act; the Commissioners of Works and Public Buildings, and certain parishes mentioned in the Act. With regard to lighting, many of the parishes of the metropolis had adopted the Lighting and Watching Act, the 3 & 4 Will. 4, c. 90, which still regulates their liability in respect of lighting rates. A portion of the parish of St. Leonard Bromley, now made part of the Poplar district, was formerly within the sewers commission for the levels of Havering and Dagenham, and the commissioners acting under that commission continued to collect rates and exercise powers

(*a*) See clauses, p. 581, *post*, Appendix.

over it for some time after the Metropolis Local Management Act came into operation; but a new commission has since been issued for those levels, and the part of the parish of St. Leonard Bromley referred to was omitted from its limits. Woolwich was within the sewers commission east of Lombard's Wall, and was, as regards paving, &c., subject to the provisions of a local Act. In the year 1852 it was constituted a district under the Public Health Act, and placed under the management of a Local Board of Health, which body still carries on all local works within the district; but main sewerage is, by the Metropolis Local Management Act, subjected to the control of the Metropolitan Board of Works, and the relation of the Local Board of Health to that Board is, as regards assessments and other matters, assimilated to that of the vestries and district boards in the other parts of the metropolis. The turnpike roads north of the Thames are under the management of the commissioners acting under the Consolidating Act, the 7 Geo. 4, c. 143, and there are several turnpike trusts south of that river. In enumerating the statutes making provision for the health and well-being of the community it is also necessary to refer to the Nuisances Removal Act, the Acts relating to Public Baths and Washhouses, to the Registration and Inspection of Common Lodging-houses, and to Extramural Interment, and the burial of the dead in general. It should also be borne in mind in examining the local laws of the metropolis that many special provisions affecting roads, sewers, and other matters appertaining to the functions of the administrative bodies to which the local management of the metropolis is entrusted are contained in private Acts of parliament, such as those re-

lating to Canal, Railway, Water, Gas, Telegraph, and other Companies, many of which supersede or control the provisions of the general law.

For some years previous to 1847, questions affecting the health of the community had engaged a large share of public attention, and the results of laborious and intelligent investigation upon subjects embraced within the range of such inquiries were extensively circulated. In 1843 the Poor Law Commissioners, who had been appointed to inquire into the sanitary condition of the labouring population, drew attention, in the Report of their Secretary, Mr. Chadwick, to the defective state of the sewerage and drainage of the metropolis, and to the inadequacy of the existing law to meet the exigencies of the case. The reports of the commissioners appointed to inquire into the state of large towns and populous districts appeared in 1844 and 1855, and disclosed the evils attending defective drainage, neglect of cleansing and ventilation, and the want of proper supplies of water. The commissioners for inquiring into the means of improving the health of the metropolis made their report in November, 1847, recommending, amongst other things, that the administration of the laws of sewers in the separate districts should be confided to one body of commissioners for the whole metropolis, and suggesting a general survey of the metropolitan districts. In the same month the several separate commissions of sewers were superseded, and new commissions were issued addressed to the same body of commissioners. In September, 1848, was passed the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, which authorized the Queen to issue one commission for the whole of the parts comprised in the then existing separate commissions, and to

include within it the district subject to the Regent Street commissioners acting under the 5 Geo. 4, c. 100, and any other parts not more than twelve miles distant from St. Paul's Cathedral which might be named. By this Act all local Acts relating to the former commissions were repealed. The persons to be named in the commission, together with the Lord Mayor and four others to be appointed by the Mayor, Aldermen, &c., in Common Council, were constituted the Metropolitan Commissioners of Sewers, and were empowered to require the Commissioners of Sewers for the city of London to execute works within the city limits with certain special provisions as to their cost; and the Lord Mayor and the other city members of the commission were authorized to sit and vote at all courts of sewers on questions relative to the exercise of powers affecting the city. The Act incorporated, with certain exceptions, the powers and provisions of the Statute of Sewers, 23 Hen. 8, c. 5, and of the Acts confirming, explaining, and amending that statute. The first commission issued under the new Act was dated in January, 1849, and it included the same limits as the former separate commission, together with the Regent Street and Regent's Park district; but the second commission, issued in October, 1849, added to its other districts the parish of Chiswick. The commissioners, under a provision contained in the Act, limited the exercise of their powers to what was termed their active jurisdiction; but the limits of that jurisdiction were enlarged, and shortly after the passing of the Act it included an area of 112 square miles. This was divided into separate sewerage districts or levels, some of which had been determined under the former commissions, whilst others were newly formed under the pro-

visions of this Act. The duration of the Act was limited to two years from its passing, and to the end of the then next session of parliament. It was from time to time renewed until the passing of the Metropolis Local Management Act in 1855, which continued it till that Act came into operation, when it expired. The series of Acts for continuing and amending the Metropolitan Sewers Act, 1848, were the 12 & 13 Vict. c. 93; 14 & 15 Vict. c. 75; 15 & 16 Vict. c. 64; the 16 & 17 Vict. c. 125; and the 17 & 18 Vict. c. 111. An Act was also passed for a special object in 1855, viz., the 18 Vict. c. 30. Under one or other of the Acts enumerated, the powers of the commissioners were extended as regarded the enforcement of house drainage, the levying of charges for default and improvement rates, compelling contributions to the cost of works, and other objects. One of the Acts referred to authorized the appointment of a chairman and deputy-chairman, the former with a salary; and with the view of removing objections to the borrowing powers of the commissioners on the ground that the Acts imposed no limit on those powers, the sums which they were authorized to borrow on the security of the rates were restricted first to 300,000*l.* and afterwards to 600,000*l.*

Some of the earlier works of the commission failed in consequence of special circumstances which arose in the course of their execution, but upon the whole the measures originated by those commissioners were productive of a large amount of public benefit. The subterranean survey deserves especial notice as a work of the highest utility, as without it the preparation of an effectual scheme of drainage would have been wholly impracticable. After the borrowing powers of those

commissioners were rendered effectual by the intervention of the Legislature they executed a large number of works, which afforded extensive relief to the districts affected by them. But though they performed their duties conscientiously and well, there is no doubt that the system under which they were appointed was open to objection. That system, which wholly ignored the constitutional relation between taxation and representation, and under which the ratepayers had no voice in the election of those by whom their affairs were administered, could only be of limited duration.

The condition of a large part of the metropolis, as regarded its paving and lighting and other subjects of municipal management, was in the highest degree unsatisfactory. Some of the metropolitan parishes which had a representative constitution, were well and economically managed, but a large number of them were under the control of self-elected bodies, who were to a great extent irresponsible to the ratepayers; and whilst no effectual provision was made for the main objects for which they were appointed, the districts under their charge were burdened with a large expenditure and heavy debts. The commissioners appointed in 1853 to inquire into the state of the Corporation of the City of London, had, in their report, already directed their attention to the means of giving a municipal organization to the metropolitan districts, and considered whether it was practicable to effect such an organization by means of a wider extension of the present boundaries of the city. This notion in the result was rejected, and the report recommended a distribution of the metropolis into municipal districts and the creation of a metropolitan board of works to be composed of a limited number of members deputed to it from the council of each

metropolitan municipal body, including the Corporation of the city, to which should be confided the management of public works in which the metropolis had a common interest. The comprehensive measure introduced in 1855 by Sir Benjamin Hall, then President of the General Board of Health, gave effect to many of the views expressed in that report, and also embodied other provisions essential to an effectual system of local management of the districts to which it applied. It will be convenient in this place to give an abstract of its chief provisions. The twenty-three larger parishes were to have a separate system of administration under vestries; and the other parishes and places were grouped into districts, and to be managed by district boards. The metropolis, as defined by the Act, is co-extensive with the district of the Registrar-General. Eighteen vestrymen were to be elected for every parish in which the number of rated householders should not exceed 1,000, with six additional vestrymen for every parish in which the number of rated householders should exceed 1,000, and twelve additional vestrymen for every parish in which the number of rated householders should exceed 2,000, and in the proportion of twelve additional vestrymen for every thousand rated householders, but so as not to exceed 120 in all. The incumbent and churchwardens were to be a part of the vestry. Parishes containing more than 2,000 rated householders were to be divided into wards. The qualification for a vestryman was the being rated to the relief of the poor on a rental of not less than 40*l.* a year, and he was required to be the occupier of property in the parish; but where the number of assessments at 40*l.* did not exceed one-sixth of the total number of assessments, a 25*l.* rental was sufficient. Members of the vestry

were to be elected by the rated parishioners, and the district board was to be elected by the vestries mentioned in Schedule (B.). A body called the Metropolitan Board of Works was constituted. Its members were to be elected by the Corporation of London, the vestries in Schedule (A.), and the district boards. The Metropolitan Board, vestries in Schedule (A.), and district boards were incorporated. The members of the Metropolitan Board first elected were to appoint a chairman with a salary of not less than 1,500*l.* or more than 2,000*l.* per annum. The metropolitan board were charged with the maintenance of the main sewers, and with the execution of works for intercepting sewage from the Thames, and were empowered to make orders for maintaining the main and general sewerage, placing streets in more than one parish under one management, naming streets and numbering houses, preserving the regular line of buildings, and for other objects. They were authorized to make, widen and otherwise improve streets, and to effect other objects of public benefit; but when the estimated cost of works exceeded 50,000*l.* they were to be approved by the Commissioners of Her Majesty's Works, &c., and when such cost exceeded 100,000*l.* the sanction of Parliament was rendered necessary. The plan of the works for intercepting sewage from the Thames must be approved by the Commissioners of Works and Public Buildings. The vestries and district boards were to maintain existing local sewers, and construct new ones with the previous approval of the Metropolitan Board. The liabilities of individuals *ratione tenuræ*, and on other grounds, were preserved. Various powers were conferred upon the vestries, &c., for enforcing house drainage and abating nuisances. The duties, powers, and authorities

relating to the paving, lighting, watering, cleansing, or improving parishes and districts, and to the regulation, government, or concerns of any parish or part, except such as related to the affairs of the church or the management or relief of the poor, &c., were vested in the vestries and district boards. But the Act contained a saving of the powers of certain commissioners for the maintenance and management of squares, streets, &c. and for other objects. The powers and duties of surveyors of highways were assigned to the vestry and district boards; they were to be the local authority for executing the Nuisances Removal Act; and various powers were conferred upon them for regulating streets, preventing injurious interference with the roads or pavements, and the enforcement of sanitary measures. Certain auxiliary powers were given to the boards and vestries for the execution of works. The rates to be levied were a sewers rate, a general rate, and, in some parishes or parts, a lighting rate. The debts and liabilities of the former sewers commissions and paving boards were continued a charge on the districts to which they originally belonged. Borrowing powers were given to the Metropolitan Board and to the vestries and district boards with the consent of the Metropolitan board. Provisions were made for the auditing of accounts.

The framers of this measure brought to the performance of their duty extensive knowledge of the multifarious subjects it embraced within its range, and sound judgment in dealing with them; and, considering the magnitude and diversity of the interests affected by it, the special nature of many of its provisions, and the other difficulties of the task, it must, upon the whole, be pronounced a judicious and effectual measure. But

it could not be expected that an Act dealing with such a variety of interests, and affecting the provisions of so many local Acts, should be free from defects. Experience showed that some of its provisions required amendment, and the Acts 19 & 20 Vict. c. 112, and 21 & 22 Vict. c. 104, were accordingly passed. The former, amongst other provisions, declared that all duties, powers, and privileges, including such as related to the affairs of the church or the management or relief of the poor which might be exercised by any open or elected or other vestry, should, with certain exceptions, be deemed to have become vested in the vestries appointed under the original Act. The latter repealed that enactment, by which the approval of Her Majesty's Commissioners of Works was required before any scheme of main drainage could be carried out; and it empowered the Metropolitan Board to execute works for the object in question according to such plan as they might deem proper. It was also made sufficient that the works should have the effect of preventing sewage passing into the Thames *within*, instead of *in* or *near* the metropolis, as provided by the first Act. Works might be constructed through, along, over, or under the bed, bank, and shores of the Thames. The metropolitan board were empowered to borrow three millions sterling on bonds, debentures, or other securities, and the Commissioners of the Treasury were authorized to guarantee payment of principal and interest. A main drainage rate of 8*d.* in the pound on the basis of the county rate was created, and all parts of the metropolis were to be regarded as equally benefited by the expenditure. Works on the bed and foreshore of the Thames were to be subject to the approval of the Admiralty and of the con-

servators of the Thames. The period for the completion of the main drainage works was extended from the 31st December, 1860, till the 31st December, 1863. These works, which are of vast magnitude and extent, were immediately commenced on the passing of the Act, and they are in active progress. These as also the other extensive operations of the Board are explained in their report of their proceedings in the execution of the Acts during the past year presented to both Houses of Parliament, conformably to s. 200 of the 18 & 19 Vict. c. 120. In the course of experience, further obstacles to the effectual working of the original Act were encountered. An important question arose between the Metropolitan Board and the vestries and district boards, as to the incidence of the debts contracted under the former sewers commissions. These were apportioned by the Metropolitan Board among the parishes and parts constituting the old sewerage districts in the ratio of the rateable value of the property within them. Some of the parishes deemed themselves aggrieved by this apportionment, which imposed upon them the cost of works, which though executed within the same district were not within the local limits of the parish, and urged the Board to alter it. The Board acceded, and prepared a new distribution of the debts, which they embodied in an amending bill. The alterations suggested by the Board in relation to the re-distribution of these debts were, with some exceptions, rejected by the Special Committee of the House of Commons, to which the bill was referred, and, with those exceptions, the original apportionment is still in force. The powers of the Metropolitan Board for compelling prompt payment of their precepts were found insufficient. The provisions of the

original Act, directing a different mode of assessment for the expenses of maintaining main sewers from that which applied to the cost of new thoroughfares, and from that which was subsequently authorized with respect to the cost of the main drainage works, were found anomalous and inconvenient. Further powers were required for the construction of accommodation and subsidiary works. The regulations respecting the breaking up of turnpike roads were unnecessarily restrictive; the provisions for preventing wrongful interference with sewers were found inadequate; and additional powers were required for compelling the submission of plans, &c., previously to the construction of sewers; for compelling overseers to enforce payment, by private parties, of the expenses of paving new streets; for imposing on the owners the cost of sewering streets newly laid out; for enforcing contribution to the cost of sewers by parties draining into them; and for abating nuisances and enforcing adequate sanitary regulations in general. It may be added that there was no appeal against the decision of the auditors of accounts; and modifications of the provisions of the original Act were needed in other respects. The provisions to which the foregoing observations apply are pointed out in the notes to the several sections under which they arise, and the nature and scope of the amendments introduced to meet these and other requirements, and the reasons on which they are founded, are fully explained. Many of the clauses of the bill, however, underwent hasty alteration during its progress through Parliament, and new ones were introduced without its being clearly ascertained whether or not they were consistent with the general provisions of the measure. The consequence has been that several of

its enactments are of an incongruous character, and their true construction may probably hereafter be attended with difficulty. But notwithstanding this, the last amending Act has, upon the whole, given to the boards and vestries considerable additional facilities for the performance of their functions. A good deal of discussion has taken place as to the mode in which the members of the Metropolitan Board are chosen, and an impression seems to be gaining ground that direct election by the ratepayers would be preferable to the indirect election by the vestries and district boards which now prevails. The Select Committee of the House of Commons on Metropolis Local Taxation, appointed in 1861, express themselves in their report to this effect. They state that whilst the evidence before them tended to show that the Metropolitan Board, as at present constituted, was fully competent to discharge its duties, greater authority would, in their opinion, attach to its deliberations if its members were elected by the ratepayers directly. Whether that view of the Committee is or is not well founded, the preponderance of opinion among those familiar with the working of the Board is, that though an alteration of the mode of election might not send better men to the Board, it would, at all events, secure them greater independence of action. As regards the functions of the vestries and district boards, their periodical reports under the 198th section of the statute referred to, show the large paving and other works which have been executed, and they constitute an instructive record of sanitary activity in the construction of local sewers, the extension of house drainage, the inspection of the dwellings of the poor by their medical officers, and the removal of trade and other nuisances prejudicial

to health. One great source of difficulty with which the metropolitan and other boards and vestries have still to contend, however, remains to be mentioned, and that is the means of providing funds for the extensive improvements demanded by the exigencies of metropolitan traffic. Previously to the passing of the Metropolis Management Act, public improvements had for the most part been effected by the executive government by means of parliamentary grants, or by the Corporation of London, out of its own funds, or to a great extent under powers created by special Acts of Parliament. The Metropolitan Board, unlike various municipal corporations, is not in possession of revenues derived from estates, or from tolls, dues, fees, or the like; and, the whole of the works which have hitherto been executed have been paid for out of the proceeds of direct rates upon house property (*a*). The Board did not cease to press their claims in this respect upon the attention of the Government and of Parliament (*a*), and the result has been to place at their disposal means derived from other sources for executing one of the most important of the undertakings required for the improvement of the metropolis, viz., the Thames embankment. The London Coal and Wine Duties Continuance Act, 1861, 24 & 25 Vict. c. 42, after providing that those duties should, subject to the qualification expressed in the Act, be continued until the 5th July, 1872, enacted that the duties of 1*d.* per ton

(*a*) See letter from Mr. Thwaites, chairman of the Metropolitan Board of Works, to members of Parliament representing metropolitan constituencies, dated the 18th April, 1859, pointing out the limited resources of the Board, and the vast cost of the improvements required for the purposes of metropolitan traffic.

on coal, culm, and cinders, and of 4*s.* per tun on wines, and of 8*d.* on coal, culm, and cinders, should, so soon as all charges on the London Bridge Approaches Fund should be satisfied, be paid to the account of the Thames Embankment and Metropolis Improvement Fund, and be applied to the improvement of the metropolis, as might thereafter be directed by Parliament. The execution of this important undertaking has since been confided by Parliament to the Metropolitan Board, the Thames Embankment Act, 25 & 26 Vict. c. 93, empowering them to execute the necessary works, and the Commissioners of the Treasury being authorized to provide the requisite sums out of, or by charge upon, the Thames Embankment and Metropolis Improvement Fund. This noble work will, however, be incomplete unless it be accompanied or speedily succeeded by an embankment on the south side of the river.

The boards and vestries appointed to watch over the local administration of the metropolis have large powers and commensurate responsibilities; and whilst past experience justifies the anticipation that their powers will continue to be exercised with judgment and discretion, it is earnestly to be desired that their public usefulness may be promoted by mutual confidence and increased harmony of action.

London,
November 1, 1862.

AN ACT

FOR THE BETTER LOCAL MANAGEMENT OF THE METROPOLIS (*a*).

18 & 19 VICT. CAP. 120.

14TH AUGUST, 1855.

WHEREAS it is expedient that provision should be made for the better local management of the metropolis (*b*) in respect of the sewerage and drainage, and the paving, cleansing, lighting, and improvements thereof (*c*): Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and

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(*a*) This Act has been amended by the 19 & 20 Vict. c. 112, the 21 & 22 Vict. c. 104, and the 25 & 26 Vict. c. 102, which see, *post*.

(*b*) By the 250th sect. "the metropolis" is defined to include the city of London, and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to the Act; and the city of London includes all parts now within the jurisdiction of the commissioners of sewers for the city of London. The 11 & 12 Vict. c. 163 (the City of London Sewers Act, 1848), s. 262, enacts that the word "city" shall mean the city of London and the liberties thereof, and shall include such parts of Holborn, the Minories, and Aldersgate Street, as are or have been usually treated as being within the liberties of the city, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Broker Row, Moorfields, and the courts and alleys leading into the same or communicating therewith, and all precincts and places within the city of London or the liberties thereof.

(*c*) See sect. 90, transferring, with certain exceptions, to the vestries and district boards constituted by this Act, in addition to the paving and other matters specified, all other duties,

temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

Election of Vestries and Auditors in Parishes in Schedules (A.) and (B.).

1 & 2 Will. 4, c. 60, repealed so far as regards parishes in schedules (A.) and (B.) (*d*).

I. The Act of the session holden in the first and second years of King William the Fourth, chapter sixty, "For the better Regulation of Vestries, and for the Appointment of Auditors of Accounts in certain Parishes of England and Wales," shall be repealed, from and after the passing of this Act, so far as regards any parish mentioned in either of the schedules (A.) and (B.) to this Act: Provided always, that the vestry and auditors already elected for any such parish under the said Act shall continue to be such vestry and auditors until the first election of vestrymen and auditors for such parish under this Act has taken place, but no longer (*e*); and the provisions of the said Act of King William the

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powers, and authorities in anywise relating to the regulation, government, or concerns of parishes, &c., and the 3rd section of the 19 & 20 Vict. c. 112, *post*, transferring to them, save as therein otherwise provided, the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor) which might have been performed or exercised by any open or elected or other vestry, &c.; and see as to the purposes and objects of the Act, as collected from its preamble and enactments, the judgment of Lord Justice Turner in *Carter* v. *Cropley*, 26 L. J. (N. S.) Ch. 247.

(*d*) The Act here repealed so far as regards parishes mentioned in schedules (A.) and (B.) is that commonly known as Hobhouse's Act, from which several of the provisions in the present Act relating to the constitution of vestries have in substance been adopted. See on the construction of that Act *R.* v. *St. Pancras*, 1 A. & E. 80; *R.* v. *St. Pancras*, 5 N. & M. 219; *R.* v. *St. Marylebone*, 5 A. & E. 268; *R.* v. *St. Pancras*, 11 A. & E. 15; and the cases cited, Chit. Stat. vol. 3, p. 1518, *et seq. notes*.

(*e*) As to first election of vestrymen and auditors, see ss. 7, 11, *post*.

Fourth shall continue applicable to every such vestry and to their proceedings, and the books in which the same are entered, and to such auditors and their proceedings accordingly.

Vestries in parishes named in either of the schedules (A.) and (B.) to consist of not less than 18 or more than 120 persons qualified and elected as after provided.

II. The vestry in every parish mentioned in either of the schedules (A.) and (B.) to this Act shall consist of a certain number of persons qualified and elected as herein provided; (that is to say,) eighteen vestrymen for every parish in which the number of rated householders (*f*) shall not exceed one thousand; and six additional vestrymen, that is, twenty-four vestrymen for every parish in which the number of rated householders shall exceed one thousand; and twelve additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case the number of vestrymen shall exceed one hundred and twenty: provided also, that the incumbent and churchwardens (*g*) of each such parish shall constitute a part of the vestry, and shall vote therein, in addition to the elected vestrymen: provided also, that every district rector now constituting in any such parish a part of the vestry thereof, shall continue to constitute a part of the vestry thereof under this Act: provided

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(*f*) In a case in which A. and his partner had a dwelling house in a town with a counting-house attached to it, the partners using the counting-house daily for their business, and the dwelling house being occupied by a clerk of the firm and the rent and taxes being paid by the partnership, it was held that each of the partners was a *householder* within 26 Geo. 3, c. 38; *Rex* v. *Hall*, 1 B. & C. 123. So also under similar circumstances that each of the partners of a firm was a *householder* within 43 Eliz. c. 2, and liable to serve the office of overseer; *R.* v. *Poynder*, 1 B. & C. 178.

(*g*) Where one of a number of trustees, directed by a local Act to be filled up at certain intervals to *fifty-one over* and *besides* the vicar, churchwardens, &c., became churchwarden, it was held that no vacancy was thereby created; *R.* v. *Trustees of Kensington*, 2 B. & Ad. 740.

also, that where in any parish the whole number of persons qualified to be vestrymen shall not amount to eighteen, the vestry thereof shall consist of so many persons as are so qualified, anything in this Act to the contrary notwithstanding.

Such parishes with more than 2,000 rated householders to be divided into wards.

III. Each of the said parishes which at the time of the passing of this Act (*h*) contains more than two thousand rated householders shall be divided into wards; and it shall be lawful for such person or persons as may be appointed for this purpose as herein provided to determine and set out, on or before the tenth day of October next, the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole number of wards in any parish shall not exceed eight; and the person or persons setting out such wards in any parish shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in his or their judgment it is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three; and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal secretaries of state, and also to the vestry clerk of the parish to which such division and apportionment relate; and if Her Majesty, by the advice of her privy council, approve of such division and apportionment, the particulars thereof shall be published

(*h*) The omission in this Act to make provision for a future increase of rated householders is supplied by sect. 41 of 25 & 26 Vict. c. 102, *post*, which provides for the division into wards, by the metropolitan board, of parishes not divided under this Act.

in the London Gazette (*i*); and the parish shall, after such publication, be deemed to be divided into such wards so determined and set out, and such division shall continue and be in force until the same be altered as herein provided; and the number of vestrymen assigned to each ward shall be the number to be elected for such ward until altered as aforesaid: Provided always, that if Her Majesty, by advice of her privy council, do not approve such division and apportionment, such publication as aforesaid shall nevertheless be made, and such division and apportionment be in force for the purpose of any election under the provisions of this Act, until such time as Her Majesty, by advice of her privy council, upon further information and report from any such person or persons, definitively approve the division of such parish into wards, and of the number of vestrymen assigned to each ward, in manner hereinbefore mentioned: Provided also, that where any parish is already divided into wards under any local Act such parish shall be deemed to be divided into such wards for the purposes of this Act, without any division of such parish into wards being made as hereinbefore provided, but the number of vestrymen to be elected for such parish shall be apportioned as aforesaid among the wards of such parish by such person or persons as may be appointed for that purpose as herein provided.

Power to secretary of state to appoint persons to set out the wards, and apportion number of vestrymen to be elected.

IV. One of Her Majesty's principal secretaries of state shall, as soon as conveniently may be after the passing of this Act, appoint not more than four fit persons, the names of such persons to be published in the London Gazette, to set out the wards into which the said parishes are by this Act directed to be divided, and to apportion the number of vestrymen to be elected for such parishes respectively among such wards, and also to apportion the number of vestrymen to be elected for any

(*i*) The supplement to the London Gazette of 19th Oct., 1855, contains the orders in council approving the division and apportionment made pursuant to this provision.

parish already divided into wards as aforesaid among such wards; and any one or more of such persons may be appointed to act as aforesaid separately from any other or others of them as such secretary of state may see fit; and such secretary of state shall, in case circumstances appear to him so to require, appoint any other fit person or persons in the place of or in addition to any such person or persons originally appointed under this provision; and every person appointed to set out such wards shall be paid at a rate not exceeding the sum of 5*l.* 5*s.* for every day that he is employed by virtue of such appointment, and the amount payable to him in respect of such employment in each parish shall be determined and certified by the commissioners of Her Majesty's treasury, and the amount so certified shall be paid out of the poor rates of the parish.

If relative amounts of population of wards vary in any future census, the numbers of vestrymen may be altered (*a*).

V. When at any time upon any account taken of the population by the authority of parliament, the relative numbers of the inhabited houses in the several wards of any parish divided into wards as aforesaid are found to have varied from those shown by the last previous census, it shall be lawful for the metropolitan board of works, upon the application of the vestry or any ratepayers of such parish, to alter the number of vestrymen assigned to such wards or any of them, but so that the number of vestrymen assigned to each ward shall be a number divisible by three.

Qualification of vestrymen.

VI. The vestry elected under this Act in any parish shall consist of persons rated or assessed (*b*) to the relief of the poor upon a rental (*c*) of not less than 40*l.* per

(*a*) As to future division of parishes into wards see *note* (*h*), *ante*.

(*b*) Where A. occupied jointly with B., the latter alone being assessed, and A. *bonâ fide* paid the rate, but without being called upon to do so, he was held not to be rated within 2 Will. 4, c. 45, s. 27; *Moss* v. *Overseers of Lichfield*, 7 M. & Gr. 72; and see *R.* v. *Hulme*, 4 Q. B. 538.

(*c*) The 19 & 20 Vict. c. 112, s. 8, *post*, declares that the amount specified in that column in the schedule to the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, which is headed

annum; and no person shall be capable of acting or being elected as one of such vestry for any parish unless he be the occupier of a house, lands, tenements, or hereditaments in such parish, and be rated or assessed as aforesaid upon such rental as aforesaid within such parish: Provided always, that in any parish in which the number of poor rate assessments at 40*l.* or upwards does not exceed one-sixth of the whole number of such assessments (*d*) it shall not be necessary, in order to qualify a person to be a vestryman, that the amount of rental upon which he is rated or assessed as aforesaid exceed 25*l.*: Provided also, that the joint occupation of any such premises as aforesaid, and a joint rating in respect thereof, shall be sufficient to qualify each joint occupier in case the amount of rental on which all such occupiers are jointly rated will, when divided by the number of occupiers, give for each such occupier a sum not less than the amount hereinbefore required.

As to the first election of vestrymen under this Act.

VII. The first election of vestrymen under this Act in every parish shall be holden in the month of November next after the passing of this Act, and between the fifth and twenty-first days of that month, and the day on which such election shall commence shall be appointed by the churchwardens of the parish, and twenty-one days previously to the day of election notice of such election shall be given in manner hereinafter directed (*e*) concerning notice of election of vestrymen and auditors, and the next such election shall take place on such day

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"Rateable Value," shall be deemed the rental for the purposes of this Act. See this question raised, before the passing of the amending Act, in *R.* v. *Churchwardens of St. Mary, Lambeth*, 20 J. P. 276. To render a party eligible under s. 20 of Hobhouse's Act, 1 & 2 Will. 4, c. 60, it was held not to be necessary that he should be rated in respect of property in his own possession, but that the rental might be made up of tenements separately held and not in his occupation; *R.* v. *St. Pancras*, 1 A. & Ell. 80.

(*d*) It would seem that where a number of distinct tenements are in the rate book included in the same assessment, that constitutes one assessment for the purposes of this computation.

(*e*) See sect. 26, as to the publication of notices and lists.

in the month of May in the year 1857 as the vestry shall appoint, and every subsequent election shall take place annually in the month of May in every year as the vestry appoint.

The full number of vestrymen to be chosen at first election, and existing vestries superseded.

VIII. At the first such election of vestrymen as aforesaid for any parish, the full number of elective vestrymen of which such vestry is to consist, as hereinbefore mentioned, shall be elected, and such vestrymen, with such other persons as hereinbefore mentioned, shall forthwith be deemed to constitute the vestry of such parish, and shall supersede any existing vestry therein, and exercise the powers and privileges held by such existing vestry (*f*), save as in this Act otherwise provided (*g*); and the authority of such vestry may be pleaded before any justice or justices of the peace, or in any court of law in regard to all parochial property or monies due, or holdings or contracts, or other documents of the like nature, under the control or in the keeping of such existing vestry; and all parish officers or boards shall account to them in like manner as they are by law liable to account to such existing vestry.

As to the term of office of vestrymen

IX. One-third of the vestrymen first elected under this Act in any parish, or, where such parish is divided into wards under this Act, in each ward of such parish,

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(*f*) Where by a local Act making the hamlet of Spitalfields a distinct parish, the rector, churchwardens, and others, were constituted the vestrymen of the parish, and by another local Act they were empowered to make poor rates, it was held that the power of making poor rates possessed by the old vestry was transferred to the new vestry, and that the rates made by the latter were valid, the overseers not being entitled to vote; *Vaughan* v. *Imray*, 28 L. J. (N. S.) M. C. 78. See *Reg.* v. *Rendle*, note to sect. 3 of 19 & 20 Vict. c. 112, *post*.

(*g*) This provision transfers to the vestries constituted by this Act all the powers of existing vestries, subject to the restrictions in sects. 90, 91, and to the other provisions of the Act. See now the amending Act, the 19 & 20 Vict. c. 112, s. 3, *post*, as to the duties, powers, and privileges declared to have become transferred to vestries and district boards under this Act.

shall go out of office at the time appointed for the election of vestrymen in the year 1857, one other third of them at the time appointed for such election in the year 1858, and the remaining third at the time appointed for such election in the year 1859; and the vestry shall, at some meeting before the time of the election in 1857, determine by lot which of the members first elected shall constitute the one-third to go out of office in the years 1857 and 1858 respectively; and all members from time to time elected at the annual elections after the first election, shall go out of office at the time appointed for the annual election in the third following year, except such members as are elected to supply vacancies occasioned otherwise than by effluxion of time; and such last-mentioned members shall go out of office at the respective times when the terms of office of the members in whose places they are respectively elected would have expired by effluxion of time.

elected at first election, and as to future elections.

X. At every election of vestrymen under this Act, except the first, for any parish or any ward of any parish, the parishioners of such parish entitled to vote in such election (*h*) shall elect as many vestrymen as there are vacancies in the vestry, or among the vestrymen elected for such ward, whether such vacancies be occasioned by the expiration of the term of office, or by death or otherwise (*i*).

Vacancies to be filled up at annual elections.

XI. For every parish mentioned in either of the schedules (A.) and (B.) to this Act, there shall be elected such number as hereinafter mentioned of the ratepayers of the parish who have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected at the same times and in the same manner as members of the vestry; and the number of ratepayers so to be elected auditors in any parish not divided into

Appointment of auditors of accounts for parishes in schedules (A.) and (B.)

(*h*) See sect. 16.

(*i*) See as to disqualification of vestrymen, and penalties, sect. 54; and as to the resignation of office and notification thereof, sect. 55.

wards under this Act shall be five, and the number of ratepayers so to be elected auditors in any parish which is divided into wards shall be the same as the number of wards, one auditor being elected in each ward: Provided always, that where the number of wards into which any parish is divided exceeds five, the vestry of such parish shall at their first meeting after the election of auditors as aforesaid, in any year, elect by ballot from among such auditors five of them, and the five persons so elected by ballot shall be the auditors for such parish exclusively of any other person or persons who may have been elected an auditor or auditors for such parish under the provisions herein contained (*k*); and a list of the five persons so elected by the vestry shall be forthwith published by the churchwardens in the parish as herein provided: Provided also, that no person shall be eligible to fill the office of auditor of accounts who is not qualified to fill the office of vestryman for the parish (*l*); but no person shall be eligible to fill the office of auditor who is a member of the vestry; and if any person be chosen to be both a member of the vestry and auditor of accounts, he shall be incapable of acting as a vestryman.

As to the term of office of auditors.

XII. The auditors first elected under this Act in any parish as aforesaid shall go out of office at the time appointed for the election of vestrymen and auditors in the year 1857, and the auditors then elected and to be thereafter elected shall go out of office at the election of vestrymen and auditors in the year next following their election.

Notice of elections.

XIII. The churchwardens of every parish mentioned in either of the said schedules (A.) and (B.), which is not divided into wards, shall, on some Sunday at least twenty-

(*k*) The bill for amending this Act, brought into the House of Commons in 1860, contained a clause for repealing this proviso, and directing that the total number of ratepayers elected as auditors for any parish divided into wards should be the auditors of accounts of such parish, but it was struck out.

(*l*) As to qualification of vestrymen, see sect. 6.

one days previously to the day of annual election of vestrymen, cause to be published in such parish as herein provided (*m*) a notice according to the following form:—

'Parish of [*here insert name of parish*].

'The parishioners duly qualified according to the pro-
'visions of the Act of the session holden in the eighteenth
'and nineteenth years of the reign of Queen Victoria,
'intituled "An Act" [*here insert the title of the Act*],
'are hereby required to meet at ——, on the —— day
'of ——, conformably to the provisions of the said Act,
'and then and there to consider of and elect fit and proper
'persons to be vestrymen and auditors of accounts of the
'parish of —— for the ensuing year [*the words* "for the
'"ensuing year" *to be omitted in the notice of the first*
'*election*]; that is to say,

'—— members of the vestry,
'—— auditors of accounts.'

And the churchwardens of every such parish as aforesaid which is divided into wards shall at the time aforesaid cause to be published as herein provided, in each ward of the parish, a notice according to the following form:—

'Parish of ——, ward of [*inserting the parish and*
'*ward*].

'The parishioners duly qualified according to the pro-
'visions of the Act of parliament of the session holden
'in the eighteenth and nineteenth years of the reign of
'Queen Victoria, intituled "An Act" [*here insert the title*
'*of this Act*], are hereby required to meet at ——, on the
'—— day of ——, conformably to the provisions of the
'said Act, and then and there to consider of and elect
'—— fit and proper persons to be vestrymen and an
'auditor of accounts of the parish of ——, for the ward
'of ——, for the ensuing year [*the words* "for the en-
'"suing year" *to be omitted in the notice of the first*
'*election*].'

(*m*) See mode of publication, s. 26.

Churchwardens to appoint persons to preside at ward elections.

XIV. Where any parish is divided into wards, the churchwardens, three clear days at least before the day of election, shall appoint in writing under their hands a person to preside at such election as aforesaid in each of the said wards, except any ward in which one of the churchwardens shall preside, and notify such appointment to the vestry clerk of the parish.

Rate collectors to assist at the elections.

XV. The rate collectors, or persons appointed by them, shall attend the churchwardens and persons presiding at elections under this Act, and inspectors of votes, to assist in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor in the parish, or the respective wards thereof, and duly qualified (*a*) to vote at the election.

Form of proceeding at elections.

XVI. On the day of election of vestrymen and auditors in any parish under this Act the parishioners (*b*) then rated (*c*) to the relief of the poor in the parish, or, where the parish is divided into wards under this Act, in the ward thereof for which the election is holden, and who are desirous of voting, shall meet at the place appointed for such election, and shall then and there nominate two

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(*a*) It was held in a case under the present Act, that the parishioner, at the time of the election of vestrymen, when his vote was challenged for nonpayment of a church rate, might show that the assessment was not *due* from him at the time of voting, the rate being illegal and void; *Tozer* v. *Child and another*, 25 L. J. (N. S.) Q. B. 337; S. C., 6 E. & B. 289. If the churchwardens act *bonâ fide* in rejecting the vote they are not liable to an action whether the rate be good or bad, *ibid.*, and see *Cullen* v. *Morris*, 2 Stark. R. 577. See *in the matter of the Election of Vestrymen for St. Clement Danes*, 20 J. P. 131; and see *R.* v. *Bidwell*, 17 L. J. (N. S.) M. C. 99.

(*b*) As to meaning of "parishioner," see Nol. P. L. i. 68, *note* (1).

(*c*) As to what amounts to being rated, see *note* (*a*) to s. 6, and 19 & 20 Vict. c. 112, s. 4, *post*, enabling occupiers to claim to be rated, and s. 5 providing that in case of a composition the occupier shall not be bound to pay or tender more than the amount payable under the composition, and s. 6 declaring occupiers rated under that Act entitled to vote in the election of vestrymen and auditors.

ratepayers of the parish, or (if the parish be divided into wards) of the ward for which the election is holden, as fit and proper persons to be inspectors of votes; and the churchwardens, or, in the case of a ward election, such one of the churchwardens as is present thereat, or, where one of the churchwardens is not present, the person appointed by them to preside thereat, shall, immediately after such nomination as aforesaid by the parishioners, nominate two other such ratepayers to be such inspectors; and after such nominations the said parishioners shall elect (*d*) such persons duly qualified as may be there proposed for the offices of vestrymen and auditors or auditor; and the chairman at such meeting shall declare (*e*) the names of the parishioners who have been elected by a majority of votes at such meeting: Provided nevertheless, that no person shall be entitled to join or vote in any such election for any parish, or any ward of any parish, or be deemed a ratepayer thereof, or be entitled to do any act as such under this Act, unless he have been rated in such parish to the relief of the poor for one year next before the election, and have paid all parochial rates, taxes, and assessments due (*f*) from him at the time of so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting.

Power to demand a poll, which shall

XVII. Provided always, that any five ratepayers may then and there, in writing or otherwise, demand a poll (*g*),

(*d*) See provision in s. 39 of 25 & 26 Vict. c. 102, *post*, where a person is returned to serve as vestryman for more than one ward.

(*e*) At an election of vestrymen under 1 & 2 Will. 4, c. 60, it was held that the decision of the chairman on a show of hands was not conclusive, but that he was bound on a requisition to ascertain the numbers; *R.* v. *St. Pancras*, 11 A. & Ell. 15.

(*f*) The 19 & 20 Vict. c. 112, s. 7, *post*, enacts that this provision shall not be taken to include *church rates*.

(*g*) In general a poll is demandable by a voter as of right; see *R.* v. *Hedger*, 12 A. & E. 151; *Campbell* v. *Maund*. 5 A. & E. 865; *R.* v. *D'Oyly*, 12 A. & E. 139; and as to mode of taking poll and right to vote, see *R.* v. *Churchwardens, &c. of Lambeth*, 8 A. & E. 356; *R.* v. *Vestrymen of St. Pancras*, 11 A. & E. 15; *R.* v. *Hedger*, *supra*.

be taken by ballot.

which shall be taken by ballot on the day next following, and shall commence at eight of the clock in the forenoon and close at such hour as hereinafter mentioned; that is to say, at six of the clock in the afternoon in the case of any election to be holden in November, 1855, and at eight of the clock in the afternoon in all other cases; each ratepayer depositing as hereinafter provided two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names or name of the persons or person for whom such parishioner may vote as fit and proper to be auditors or auditor of accounts; and each ratepayer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors or auditor of accounts to be chosen in the said parish or ward.

Duty of inspectors of votes.

XVIII. The persons voting shall deposit such folded papers in two separate sets of balloting glasses or boxes (*a*), one set for voting papers for members of vestry, and another set for the voting papers for auditors or an auditor; and the said balloting glasses or boxes shall be closed at the time hereinbefore fixed for the closing of the poll; and the inspectors (*b*) for the parish or ward (as the case may be) shall forthwith meet together, and proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding two days (Sunday excepted), until they have decided upon the persons duly qualified (*c*) according to

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(*a*) This section is only directory, and where both sets of names were written on one paper, and put into one balloting box, it was held not to invalidate the election; *Ex parte Middleton, in the matter of Kenneth and others*, 25 J. P. 791.

(*b*) See as to appointment of an umpire by the inspectors before commencing their duties, 25 & 26 Vict. c. 102, s. 36, *post*.

(*c*) Persons claiming to be returned must be rated to the full amount required by the 6th section at the time of voting,

the provisions of this Act who may have been chosen to fill the aforesaid offices.

Provision for case of equality of votes.

XIX. In case an equality of votes appear to the aforesaid inspectors to be given for any two or more persons to fill either of the said offices, the inspectors shall decide by lot upon the person to be chosen.

If in the interval between elections the vestry of any parish be reduced below two-thirds, the vacancies to be filled up as herein named.

XX. If in the interval between any election under this Act of vestrymen in any parish and the time at which the next election would in the absence of this enactment have taken place the number of such vestrymen be reduced below two-thirds of the full number, so many vestrymen as may be requisite for filling up such number shall be forthwith elected in like manner as in the case of the annual election of such vestrymen, and the provisions of this Act shall be applicable in the case of such election accordingly, save that the notice of election shall be varied from the form prescribed by this Act so far as may be necessary, and where such parish is divided into wards under this Act each ward shall supply the vacancies among the members elected for the same; and every vestryman elected under this enactment shall go out of office at the time when the term of office of the person in whose place he is elected would have expired by effluxion of time.

Penalty for forging or falsifying any voting paper or obstructing the election.

XXI. If any person knowingly personate and falsely assume to vote in the name of any parishioner entitled to vote in any election under this Act, or forge or in any way falsify any name or writing in any paper purporting to contain the vote or votes of any parishioner voting in any such election, or by any contrivance attempt to obstruct or prevent the purposes of any such election, the person so offending shall, upon conviction before any two or

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and it is the duty of the inspectors of votes to inquire into the qualification of candidates, and to return the names of those who have the majority of votes, and are also duly qualified; *Ex parte Ross, in the matter of the Vestry of St. Pancras*, 26 L. J. (N. S.) Q. B. 312; S. C. *nom. R. v. Inspectors of Votes, &c. of the Parish of St. Pancras*, 7 Ell. & Bl. 954.

more justices of the peace having jurisdiction in the parish, be liable to a penalty of not less than 10*l.* and not more than 50*l.*, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months.

A list of persons elected vestrymen and auditors by parishioners to be published.

XXII. The inspectors shall, immediately after they have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, or other the person presiding at the election, a list of the persons chosen by the parishioners to act as vestrymen and auditors or an auditor of accounts; and the said list, or a copy thereof, shall be published in the parish as herein provided (*d*).

Penalty on inspector for making incorrect return.

XXIII. If any inspector wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the parish, and upon conviction for such offence, be liable to a penalty of not less than 25*l.* and not exceeding 50*l.*

Vestries to provide places for holding elections, and pay expenses of taking poll, &c.

XXIV. The vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act shall provide such places as may be requisite for holding elections of vestrymen and auditors under this Act, and taking the poll thereat; and the expenses of providing such places, of publishing notices, of taking the poll, and of making the return at elections of vestrymen and auditors, shall be paid out of the poor rates of the parish by order of the vestry (*e*): Provided always, that the places requiring to be provided for the first election under this Act of vestrymen and auditors in any parish shall be provided by the churchwardens, and the expenses of providing the same shall be paid out of the poor rates, upon their order.

(*d*) See sect. 26.

(*e*) See as to payment of expenses, not otherwise provided for, incurred by vestries in sched. (B.) to this Act, 25 & 26 Vict. c. 102, s. 16, *post*.

As to parishes having no churchwardens.

XXV. The provisions hereinbefore contained shall, so far as concerns any parish in either of the said schedules (A.) and (B.) in which there are no churchwardens, be construed as referring to the overseers of the poor instead of the churchwardens.

How notices and lists to be published.

XXVI. Every notice and list hereinbefore required to be published in any parish or ward of any parish shall be so published by being fixed in some public and conspicuous situation, on the outside of the outer door or outer wall near the door of every church and public chapel in such parish or ward, including places of public worship which do not belong to the Established Church, and if there be no such building as aforesaid, then in some public and conspicuous situation within such parish or ward.

Churchwardens, &c., not complying with Act guilty of misdemeanor.

XXVII. If any churchwarden, overseer, rate collector, or other parish officer refuse or neglect to call any meeting, or give any notice, or do any other act required of him under the provisions of this Act, he shall be deemed guilty of a misdemeanor.

Quorum of vestries.

XXVIII. All powers or duties to be performed by the vestry of any parish under this Act may be exercised and performed respectively by the major part of such vestry assembled at any meeting (*f*), there being not less than five vestrymen present at a meeting of a vestry which consists of not more than eighteen elected vestrymen, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four elected vestrymen and no more, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards,

(*f*) As to requirements in notices of vestry meetings in general, see Prideaux, Duties of Churchwardens, 9th ed. p. 87, *et seq.* The 19 & 20 Vict. c. 112, s. 9, *post*, enables special meetings of vestries to be convened by notice transmitted by the post, and by affixing a notice on or near the door of the building where the meeting is to be holden. See as to day and hour for meetings of vestries, 25 & 26 Vict. c. 102, s. 37, *post*.

and at every such meeting all questions shall be decided by the votes of the majority (*g*) of the vestrymen present, and the vestry may act notwithstanding any vacancies therein.

Meetings not to be holden in the church (*h*).

XXIX. In any case in which the vestry-room of any such parish as aforesaid is not sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish, but not in the church or chapel thereof.

Meeting to elect a chairman.

XXX. At every meeting of any vestry under this Act, in the absence of the persons authorized by law or custom to take the chair (*i*), the members present shall elect a chairman for the occasion before proceeding to other business, and the chairman, in case of an equality of votes on any question, shall have a second or casting vote.

Formation of Parishes into Districts, and Constitution of District Boards.

Parishes in schedule (B.) to be united, and form

XXXI. For the purposes of this Act the several parishes mentioned in the second column of schedule (B.) to this Act shall be united, and form the respective

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(*g*) This means an actual majority of the vestrymen assembled, and where a local Act empowered the vestry, or "the major part of them," to remove a poor-rate collector, it was held that it was not sufficient at a meeting of thirty-five vestrymen for sixteen to vote for the removal, and eleven against it, the remaining eight not voting; *R.* v. *Overseers of Christ Church*, 26 L. J. (N. S.) M. C. 69; affirmed in error, 27 L. J. (N. S.) M. C. 23. See also *re Eynsham*, 18 L. J. (N. S.) Q. B. 210; S. C. 12 Q. B. 398, *n.* See as to division after show of hands, *Tear* v. *Freebody*, 4 C. B. (N. S.), 228.

(*h*) See stat. 13 & 14 Vict. c. 57, for preventing the holding of vestry or other meetings in churches, &c.

(*i*) See as to the right of the minister to preside at vestry meetings, *R.* v. *D'Oyly*, 12 A. & Ell. 139; *Wilson* v. *M'Math*, 3 Phill. Ecc. Ca. 67; 3 B. & A. 244, *notes*; and see *Mawley* v. *Barbet*, 2 Esp. 687.

districts mentioned in conjunction therewith and named in the first column of the same schedule; and there shall be a board of works for each such district, composed of the members elected as hereinafter mentioned for the parishes forming such district.

Districts, and district boards constituted (*k*).

XXXII. The vestry constituted by this Act in every parish in any such district shall, on the 28th day of November in the year 1855, elect the number of persons mentioned in the third column of the said schedule (B.) in conjunction with such parish to be a member or members of the board of works for such district.

Vestries to elect members of district boards.

XXXIII. When at any time hereafter, upon any account taken of the population by the authority of parliament, the relative numbers of the inhabited houses in the several parishes forming any such district are found

If relative numbers of inhabited houses in parishes in any district

(*k*) Considerable discussion has taken place as to the soundness of the principle on which these districts were constituted, having regard to population, rental, community of benefit, and other material objects, and various propositions have been made for altering them. Clauses were either introduced into the last amending Act, or moved on its passage through parliament, to the effect, that certain parts of the parish of Hornsey should, for the purposes of paving, lighting, cleansing, and sewerage, be deemed to be part of the parish of Stoke Newington, and be rateable by the metropolitan board of works and the board of works for the Hackney district; for adding the parts subject to the jurisdiction of the trustees acting in execution of the Act 37 Geo. 3, c. 87, to the ward of Tower, in the city of London, a provision which was introduced in consequence of the doubts which existed as to the limits of the district of the Tower mentioned in sched. (B.) to this Act, and therein included in the Whitechapel district; for dividing Deptford and Greenwich, and forming St. Paul, Deptford, Hatcham, and St. Nicholas, Deptford, into a separate district; for dividing St. John, Hackney, and St. Mary, Stoke Newington, and placing the vestries of those parishes on a similar footing to that of the vestries mentioned in schedule (A.); and for repealing the 46th section of this Act, and enabling each of the districts of Plumstead and Lewisham to elect a member at the metropolitan board of works. But all these propositions were rejected, and the constitution and representation of the districts, as defined by this Act, remain unaltered.

vary on any future census the numbers of members may be altered.

to have varied from those shown by the last previous census, it shall be lawful for the metropolitan board of works constituted by this Act, upon the application of the vestry or any ratepayers of any such parish, to alter the number of the members of the board of works for such district to be elected for all or any of the parishes therein (*a*); but so that the number of members to be elected for any such parish, if exceeding three, shall be a number divisible by three.

As to the term of office of members of district boards elected at first election, and as to future elections.

XXXIV. One-third of the members of any such board first elected for any parish for which three or more such members are by this Act appointed to be elected shall go out of office at the time hereinafter appointed (*b*) for the election of members of such board in the year 1857, one other third of them at the time appointed for such election in 1858, and the remaining third at the time appointed for such election in the year 1859; and the vestry shall at the time of the first election under this Act of such members determine by lot which of the members first elected shall constitute the one-third to go out of office in the years 1857 and 1858 respectively; and all members elected to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office at the election of members of such board in the third following year.

Elections to be held annually for supplying vacancies occasioned by expiration of term of office.

[XXXV. (*c*) The vestry of every such parish shall on the first Wednesday in the month of June in the year 1857, and in every subsequent year, elect so many vestrymen of such parish to be members of the board for the district in which such parish is comprised as may be necessary for supplying the vacancies among the members of such board, elected for such parish, occasioned by expiration of the term of office of the members going out of office at the time of such election.]

(*a*) See similar provision with respect to vestries, s. 5.

(*b*) See s. 35.

(*c*) This section is repealed by the 40th section of the 25 & 26 Vict. c. 102, *post*, which renders persons qualified by rating and occupation eligible though not vestrymen.

XXXVI. The members of any such board first elected for parishes for which less than three members are by this Act appointed to be elected shall go out of office on the said first Wednesday in June, 1859, and members subsequently elected for such parishes to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office on the first Wednesday in June in the third year following their election; and the vestries of such parishes shall on the said first Wednesday in June in the year 1859, and in every third following year, elect members in the place of the members then going out of office. Provision as to parishes not electing as many as three members of a district board.

XXXVII. When any member of any district board dies, resigns, or ceases to be such member, otherwise than by the expiration of his term of office (*d*), the vestry of the parish for which he was elected shall with all convenient speed elect a person to be a member of such board in his place; and every member of any such board elected to supply any such vacancy shall go out of office when the term of office of the member in whose place he is elected would have expired by effluxion of time. Provision as to casual vacancies.

XXXVIII. All powers and duties vested in the board of works for any district may be exercised or performed at any meeting of such board holden under this Act, there being not less than seven members of the board present; and at every such meeting all questions shall be decided by the votes of the majority (*e*) of the members present; and the board may act notwithstanding any vacancies therein, and notwithstanding any omission to elect any member or members of such board, in pursuance of this Act. Powers of district boards to be exercised at meetings not less than seven members being present.

XXXIX. The first meeting of the board of works for any district shall be holden on the Wednesday in the Ordinary meetings of district boards.

(*d*) See sect. 54.

(*e*) See as to what is a majority, note (*g*) to sect. 28, *ante*.

week next following the election of such board, at ten o'clock in the forenoon, at the place at which the vestry of the parish in such district first named in schedule (B.) to this Act usually meet; and every subsequent ordinary meeting shall be holden on and at such day, time, and place as the board may from time to time appoint in this behalf (*e*), subject, nevertheless, to the provision hereinafter contained (*f*), appointing the day on which meetings shall be holden for the first election of the metropolitan board of works.

Special meetings of district boards.

XL. A special meeting of any such board may be convened by any five members of the board, or by the clerk of the board, upon the requisition in writing of five members of the board, by a notice to the several members thereof forty-eight hours at least before the time of meeting, such notice to be signed by the members or clerk convening the meeting, and to specify the object thereof (*g*).

Chairman to be elected at meeting of board.

XLI. Every such board shall at every meeting of such board, before proceeding to business, elect a chairman of such meeting, and such chairman, in case of an equality of votes on any question, shall have a second or casting vote.

Incorporation of Vestries and District Boards.

District boards and vestries of parishes in schedule (A.) incorporated.

XLII. The board to be constituted as aforesaid for every such district shall be a body corporate by the name of "The Board of Works for the —— district," and the vestry of every parish mentioned in schedule (A.) to this Act shall be a body corporate, by the name of "The Ves-

(*e*) See provision as to days of meeting of district boards, 25 & 26 Vict. c. 102, s. 37, *post*.
(*f*) See sect. 45.
(*g*) See note (*e*), p. 28.

try of the Parish of ——, in the County of ——," and every such board and vestry shall by such name respectively have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this Act.

Constitution and Incorporation of Metropolitan Board of Works.

Metropolitan board of works constituted and incorporated.

XLIII. A board, to be called "The Metropolitan Board of Works," shall be constituted as hereinafter mentioned, and such board shall by such name be a body corporate, and have perpetual succession and a common seal, and sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this Act.

Three members of metropolitan board to be elected for the city.

XLIV. The mayor, aldermen, and commons of the city of London, in common council assembled, shall, on the 12th day of December, 1855, elect three persons to be members of the said metropolitan board, and shall, when any member of such board elected by the said mayor, aldermen, and commons dies, resigns, or otherwise ceases to be such member, elect some person in his place (*h*).

Vestries of single parishes and district boards to elect members of the metropolitan board.

XLV. The vestry of each of the parishes mentioned in the first part of the said schedule (A.) shall, at a meeting of such vestry to be holden on the 12th day of December, 1855, elect two persons to be members of the said metropolitan board of works; and the vestry of each of the parishes mentioned in the second part of the said schedule (A.) except the parish of Rotherhithe, and the board of works for each of the districts mentioned in the first part of the said schedule (B.), shall, at a meeting

(*h*) See sects. 54, 55.

of such vestry and board respectively to be holden on the last-mentioned day, elect one person to be a member of the said metropolitan board; and every such vestry and board shall, when any member of such metropolitan board, elected by such vestry or board, dies, resigns, or otherwise ceases to be such member, elect a person to be a member of the said metropolitan board in the place of the member so dying, resigning, or otherwise ceasing to be such member.

Boards for districts of Plumstead and Lewisham united for electing a member of metropolitan board.

XLVI. The districts of Plumstead and Lewisham, mentioned in the second part of the said schedule (B.), shall be united for the purpose of electing from time to time a member of the metropolitan board of works; and the boards of works for such districts shall, at a joint meeting of such boards, to be held on the said 12th day of December, 1855, at the place of meeting of the board of works for the district of Plumstead, elect a person to be a member of the said metropolitan board; and when any member of such board elected by the boards of works for the said united districts dies, resigns, or otherwise ceases to be such member, such boards of works shall, at a joint meeting of such boards to be holden at the place aforesaid, elect some person in his stead; and such meeting shall be convened as follows; that is to say, the clerk of the board of works for the district of Plumstead shall communicate with the clerk of the board of works for the district of Lewisham, and arrange with him the time of such meeting of the boards of works for such districts; and when such arrangement has been made, notice of the time, place, and object of such meeting shall be given by such clerks respectively in manner required for notices of special meetings of the boards for such districts; and every election to be made as aforesaid by the said boards shall be determined by the votes of the majority of the members thereof present at the meeting; and every such meeting shall, before proceeding to the election, choose a chairman, who shall preside

thereat, and shall, in case of an equality of votes for two or more persons, have a second or casting vote.

The parish of Rotherhithe and district of St. Olave united for electing a member of the metropolitan board of works.

XLVII. The parishes of Rotherhithe, Saint John, Horselydown, Saint Olave, and Saint Thomas, Southwark, shall be united for the purpose of electing from time to time a member of the metropolitan board of works; and the vestries of such several parishes shall, at a joint meeting of such vestries to be holden on the said 12th day of December, 1855, at the place of meeting of the vestry of the parish of Saint Olave, elect a person to be a member of the said metropolitan board; and when any member of the said board elected by such vestries dies, resigns, or otherwise ceases to be such member, such vestries shall, at a joint meeting of such vestries to be holden at the place aforesaid, elect some person in his stead; and such meeting shall be convened as follows; that is to say, the vestry clerk of the parish of Saint Olave shall communicate with the vestry clerks of the said other parishes, and arrange with them the time of such meeting; and when such arrangement has been made, notice of the time, place, and object of such meeting shall be given by the respective vestry clerks of all the said parishes in manner required for notices of vestry meetings; and every election to be made as aforesaid by the said vestries jointly shall be determined by the votes of the majority of the members thereof present at the meeting; and every such meeting shall, before proceeding to the election, choose a chairman, who shall preside thereat, and shall, in case of an equality of votes for two or more persons, have a second or casting vote.

As to the term of office of members of metropolitan board elected at first election, and as to future elections.

XLVIII. One third of the members first elected as aforesaid of the metropolitan board of works shall go out of office on the second Wednesday in June, 1857, one other third of them on the second Wednesday in June, 1858, and the remaining third on the second Wednesday in June, 1859; and such first elected members shall determine by lot among themselves which of them shall

constitute the one third to go out of office in the years 1857 and 1858 respectively; and all members of the said board elected to supply any vacancy occasioned by any member's going out of office by the expiration of his term of office shall go out of office on the second Wednesday in June in the third year next following the year of his election; and every member of the said board elected to supply any other vacancy shall go out of office when the term of office of the member in whose place he is elected would have expired by effluxion of time.

Elected members of metropolitan board to elect a chairman.

XLIX. The members first elected of the metropolitan board of works shall meet at such time and place as one of Her Majesty's principal secretaries of state shall by notice in the London Gazette appoint in this behalf, and shall at such meeting, or some meeting to be holden by adjournment thereof (which it shall be competent for the members present to appoint), elect a chairman of the said board, and shall also decide upon the amount of salary to be paid to such chairman, such salary not to be less than 1,500*l.* and not to exceed 2,000*l.* per annum; and such members, before proceeding at any such meeting to such election, or to determine the amount of such salary, shall choose from among the members present a chairman of such meeting, and such election of the future chairman of the board shall be determined by the votes of the majority of the members present, and in case of an equality of votes the chairman of the meeting shall have a second or casting vote; and any person may be elected as aforesaid, whether he be or be not a member of the said board; and such chairman shall be subject to be removed by a resolution agreed to by two-thirds of the members present at any meeting specially convened for considering the question of such removal; and in case any elected member of the said metropolitan board be appointed chairman thereof, he shall thenceforth be a member thereof by virtue only of his office of chairman, and his place as an elected member shall become vacant, and another shall be elected in his stead.

As to appointment of chairman on any vacancy.

L. Upon every vacancy in the office of chairman of the said metropolitan board a new chairman shall be appointed, and his salary fixed, in manner hereinbefore mentioned, save that the appointment of such chairman may be made at any such meeting as may be provided in this behalf by the regulations for the time being of the said metropolitan board.

Powers of metropolitan board to be exercised at meetings, not less than nine members being present.

LI. All powers and duties vested in the metropolitan board of works may be exercised and performed at any meeting (*a*) of such board at which not less than nine members of the board are present; and at every such meeting all questions shall be determined by the votes of the majority (*b*) of the members present; and such board may act notwithstanding any vacancies therein, and notwithstanding any omission to elect any member or members of such board in pursuance of this Act, but such board shall not be deemed to be constituted until the first election of a chairman of such board under this Act.

Meetings of the metropolitan board.

LII. The first meeting of the said metropolitan board shall be holden at such time and place as the chairman may appoint, of which notice in writing, signed by such chairman, shall be given to each elected member of the said board, two clear days at the least (*bb*) before the time of such meeting; and the said board may meet at such times and places as they may from time to time appoint; and a special meeting of the said board may be convened by the chairman of the said board, or by the clerk thereof, upon the requisition in writing of the chairman or any five members of the board, by a notice to the several members thereof, two clear days at the least

(*a*) By s. 23 of 25 & 26 Vict. c. 102, *post*, resolutions of the metropolitan board, authorizing an expenditure amounting to or exceeding 20,000*l.*, are not to be valid unless confirmed at a subsequent meeting.

(*b*) As to what constitutes a majority, see note (*g*) to s. 28, *ante*.

(*bb*) This means two clear days exclusive of the day on which the notice is given, and of the day on which the meeting is to be held. See *Norton* v. *Town Clerk of Salisbury*, 4 C. B. 32.

before the time of meeting, such notice to be signed by the chairman or clerk convening the meeting, and to specify the object(*c*) thereof.

Chairman to preside at meetings. In case of vacancy, &c. a temporary chairman to be chosen.

LIII. The chairman of the metropolitan board of works for the time being elected under this Act shall preside at every meeting of such board at which he is present; and in case of a vacancy in the office of such chairman, or in his absence, some other member of such board shall be chosen to preside thereat; and in case there be an equal number of votes upon any question, the chairman presiding at the meeting shall have a second or casting vote.

Proceedings concerning Constitution, Procedure, and Officers of Metropolitan and District Boards and Vestries.

Disqualifications of members of metropolitan board, of district boards, of vestries of parishes in schedule (A.) and (B.), and of auditors.

LIV. In case any member of the metropolitan board of works, or of any district board of works, or of any vestry for any parish mentioned in schedule (A.) or (B.) to this Act, or any auditor of the accounts of any such board or vestry, be declared bankrupt (*cc*), or apply to take the benefit of or become subject to any Act for the relief of insolvent debtors, or compound (*d*) with his creditors, or accept or

(*c*) As to sufficiency of statement of special purposes for which meeting of vestry held, see *Blunt* v. *Harwood*, 8 A. & E. 610; *Smith* v. *Deighton*, 8 Moore, P. C. 179.

(*cc*) The introductory words in the 19th sect. of the Public Health Act, 11 & 12 Vict. c. 63, "No bankrupt, insolvent, or other person, not qualified as aforesaid, shall be capable of being elected," &c., do not occur in this section, and the enactment merely enumerates the events in which a member after election shall cease to be a member. The causes here enumerated would not, it is apprehended, have afforded valid grounds at common law for the amotion of members of corporations (see Grant on Corporations, p. 242, *n.* (*p*), and it is presumed that the incapacity created by this provision attaches to bankruptcy during office only. It was held under 5 & 6 Will. 4, c. 76, that a bankrupt who had not obtained his certificate was not disqualified from being *elected* as a town councillor; *R.* v. *Chitty*, 5 A. & E. 609.

(*d*) The words "by deed" occurring after "compound," in the 52nd section of the Municipal Corporations Act, 5 & 6

hold any office (*e*) under the board or vestry of which he is a member, or of whose accounts he is auditor, other than, in the case of any such auditor, his office of auditor, or in any manner be concerned or interested in any contract or work (*f*) made with or executed for such board or vestry, in every such case such person shall cease to be such member or auditor as aforesaid: Provided always, that no person being a shareholder of any joint stock company shall be disabled from continuing or acting as a member of any such board or vestry by reason of any contract between such company and such board or vestry, or of any work executed by such company; but no such member shall vote upon any question in which such company is interested; and any

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Will. 4, c. 76, are here omitted. The words used seem to include every sort of composition, whether by deed or otherwise. A composition agreement by parol with several creditors will be an answer to an action by a single creditor, if he accepted the new agreement in satisfaction. See *Boyd* v. *Hind*, 1 H. & N. 938.

(*e*) This clause does not use the expression "of profit," occurring in the 28th section of the 5 & 6 Will. 4, c. 76, and in the 9th section of the Commissioners' Clauses Act, 1847.

(*f*) Where, in an action for penalties against a town commissioner, under a local Act, incorporating the Commissioners' Clauses Act, 1847, 10 & 11 Vict. c. 16, a bill addressed by the defendant to the commissioners for lime which he had supplied was produced, it was held to be evidence for the jury that the defendant was concerned in a contract within the 10 & 11 Vict. c. 19, s. 6; *Nicholson* v. *Fields*, 31 L. J. (N. S.) Ex. 233. This case was distinguished from *Woolley* v. *Kay* (*infra*), where it was apparently the opinion of the court that a mere casual dealing would not be a contract for furnishing, supplying, or selling; per *Pollock*, C. B. *ibid.* See *Woolley* v. *Kay*; 25 L. J. Ex. 351; 1 H. & N. 307. In *Le Feuvre* v. *Lanhester*, 23 L. J. (N. S.) Q. B. 254; 3 Ell. & Bl. 230, it was decided that an alderman of a borough who had openly and *bonâ fide* supplied some iron railings to a person contracting with the local board, was not liable to the penalty imposed by the 5 & 6 Will. 4, c. 76, s. 28. For decisions on similar provisions in statutes relative to workhouses, &c., see *Greenhow* v. *Parker*, 31 L. J. Ex. 4; *West* v. *Andrews*, 5 B. & Ald. 328; *Proctor* v. *Manwaring*, 3 B. & A. 145; *Towsey* v. *White*, 5 B. & C. 125; *Henderson* v. *Sherborne*, 2 M. & W. 236; *Barber* v. *Waite*, 1 A. & E. 514.

person who acts (*g*) as a member of any such board or vestry, or as auditor of the accounts thereof, after ceasing to be such member or auditor as aforesaid, or who, being a shareholder in any joint stock company, votes upon any question in which such company is interested, and any person who acts as a member of any such vestry as aforesaid without being qualified by rating and occupation as required by this Act, shall for every such offence be liable to a penalty of 50*l.*, which may be recovered by any person who may sue for the same in any of the superior courts of law, with full costs of suit: Provided also, that all acts and proceedings of any person ceasing to be such member or auditor, or disabled from acting as aforesaid, shall, if done previously to the recovery of such penalty, be valid and effectual to all intents and purposes whatsoever.

Members of metropolitan and district boards, and of vestries of parishes in schedule (A.) or (B.), may resign.

LV. Any member of the metropolitan board of works, or of any vestry elected for any parish mentioned in schedule (A.) or (B.) to this Act, or of the board of works for any district, may at any time resign his office, such resignation of any member of the metropolitan board of works to be notified in writing signed by such member to the chairman of such board, and such resignation of any vestryman or member of any such district board to be notified in writing signed by such vestryman or member to the churchwardens of the parish for which he was elected.

Retiring members of boards and vestries may be re-elected.

LVI. Any member of the metropolitan board of works, or of any district board of works, or of any such vestry, going out of office, shall, if qualified, be capable of immediate re-election.

No resolution of me-

LVII. No resolution or other act of the metropolitan

(*g*) As to what is an evidence of *acting*, see *Williams* v. *Thomas*, 4 Ex. 479; *Charlesworth* v. *Radgard*, 1 C. M. & R 498; *Doe* v. *Young*, 8 Q. B. 63.

board of works, or of the board of works for any district, or of any such vestry, shall be revoked or altered at any subsequent meeting, unless such subsequent meeting be specially convened for the purpose (*h*), nor unless such revocation or alteration be determined upon by a majority consisting of two thirds of the members of the board, or of the vestrymen present at such subsequent meeting, if the number of members or vestrymen present at such subsequent meeting be not greater by one fifth than the number present when such resolution was made or such act was done, but if the number of members or vestrymen present at such subsequent meeting be greater by one fifth than the number present at such former meeting, then such revocation or alteration may be determined upon by a mere majority.

Metropolitan or any district board, or of any vestry, to be revoked at a subsequent meeting, unless under certain circumstances.

LVIII. It shall be lawful for the metropolitan board of works, and the board of works for any district, and any such vestry respectively, to appoint a committee or committees for any purposes which, in the discretion of the board or vestry, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee: Provided always, that the acts of every such committee shall be submitted to the general body of the board or vestry appointing such committee for their approval (*i*).

Committees may be appointed.

LIX. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be

Powers of committees.

(*h*) As to mode of convening a special meeting in the case of the metropolitan board, see s. 52, *ante;* of vestries, see 19 & 20 Vict. c. 112, s. 9, *post*, and note (*f*) to sect. 28, and note (*o*) to sect. 52, *ante;* and of district boards, s. 40, *ante.*

(*i*) That part of this section which provides that the acts of every committee shall be submitted to the general body for approval is repealed so far as concerns the metropolitan board, and other provisions are substituted; 25 & 26 Vict. c. 102, s. 31, *post.*

transacted at any meeting of the committee unless three members of the committee are present.

Minutes of proceedings of metropolitan and district boards and of vestries to be entered.

LX. Entries of all proceedings of the metropolitan board of works and every such district board, and of any such vestry, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board or vestry, and shall be signed by the members present, or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board or vestry having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board or vestry, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and every such board and vestry shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid by them or under their authority, and of all liabilities incurred by them, and of the several purposes for which such sums of money are received and paid and such liabilities incurred, and copies of all contracts entered into by any such board or vestry.

All books to be open to inspection.

LXI. All such books shall at all reasonable times be open to the examination of every member of the board and vestry respectively to which such books belong, and of every owner of property, churchwarden, overseer, and ratepayer within the metropolis, as regards books of the said metropolitan board, and of every owner of property, churchwarden, overseer, and ratepayer within any district or parish, as regards books belonging to the district board or vestry thereof (as the case may be), and of every creditor on the rates raised under this Act by any such board or vestry respectively, without fee or reward, and they respectively may take copies of or ex-

tracts from such books or any part thereof, without paying for the same; and in case the members of the board or vestry, or any of them, or any of the officers or servants of the board or vestry having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any such owner of property, churchwarden, overseer, ratepayer, or creditor to examine the same, or take any copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before two justices, forfeit any sum not exceeding 10*l.*

Power to metropolitan board, district boards, and vestries to appoint officers.

LXII. The metropolitan board of works, and (subject to the provisions herein contained) the board of works for every district under this Act, and the vestry of every parish mentioned in schedule (A.) to this Act, shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure, such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow to such clerks, treasurers, surveyors, officers, and servants respectively such salaries and wages as the board or vestry may think fit.

Clerk and treasurer not to be the same person.

LXIII. No person holding the office of treasurer under the metropolitan board, or any district board, or any such vestry, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of treasurer; and every person offending in any of the cases specified in this provision shall forfeit and pay the sum of 100*l.*, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law.

Penalty on officers, &c. being interested in contracts, or exacting fees.

LXIV. No officer or servant of the metropolitan board, or of any district board or any such vestry, shall be in anywise concerned or interested in any contract or work made with or executed for such board or vestry (*k*); and if any such officer or servant be so concerned or interested, or, under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under such board or vestry, and shall forfeit and pay the sum of 50*l.*, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law; provided that no person, being a shareholder of any joint stock company, shall be prevented from being employed as an officer or servant by reason of any contract between such company and such board or vestry, or of any work executed by such company.

Officers, &c. intrusted with money to give security for duly accounting for the same.

LXV. Before any officer or servant as aforesaid enters upon any office or employment under this Act, by reason whereof he will or may be intrusted with the custody or control of money, the board or vestry shall require and take from him such security (*l*), for the faithful exe-

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(*k*) See notes to sect. 54, *ante*, as to what is a contract within that section.

(*l*) See as to what constitutes the forfeiture of a bond for the due payment of monies received by a railway clerk, *London, Brighton, and South Coast Railway Company* v. *Goodwin*, 3 Ex. 736. As to what change in duties of a collector of poor rates is insufficient to relieve his surety from liability, see *Guardians of the Portsea Island Union* v. *Whillier*, 29 L. J. (N. S.) M. C. 171. Where the duties of an office are essentially changed and the risk of the surety increased, the surety will be discharged; *Pybus* v. *Gibb*, 26 L. J. (N. S.) Q. B. 41. See as to the liabilities of sureties for collectors and other officers on a change of duties and in other events, *Bartlett* v. *the Attorney-General*, Parker, 277; *Oswald* v. *Mayor of Berwick-on-Tweed*, 5 H. L. Ca. 856; 25 L. J. (N. S.) Q. B. 383; *Mayor of Clifton Dartmouth Hardness* v. *Silly*,

cution of such office or employment, and for duly accounting for all monies which may be intrusted to him by reason thereof, as they may think sufficient; and every such officer and servant, as well during his continuance in office or employment as upon his resignation, dismissal, or ceasing to hold his office or employment, shall respectively, when and in such manner as shall be required by the board or vestry, make out and deliver a true and perfect account, in writing signed by him, of all monies received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such monies have been disposed of, and shall together with such account deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer or such person as the board or vestry may appoint all monies owing by him; and if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such monies as aforesaid, or if, for the space of five days after being thereunto required, he fail to deliver up to the board or vestry, or to such person as they may appoint, all books, papers, writings, property, effects, matters, and things in his possession or power belonging to the board or vestry, then and in every such case (*m*) a justice shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices, at a time and place to

If officer fail to render account, &c. justice may commit offender to prison.

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26 L. J. (N. S.) Q. B. 90; *Frank* v. *Edwards*, 8 Ex. 214; and see *Evans* v. *Bremridge*, 25 L. J. (N. S.) Ch. 102, where one of two co-sureties was held to be discharged in equity from his covenant to repay money advanced to the principal debtor where the other surety did not execute. The remedies against sureties no less than a proper control over the officers authorized to recover money depends on a strict adherence on the part of boards and vestries to the regulations in force for checking the collections and for other objects.

(*m*) But an action may be brought against the defaulter; *Mayor, &c. of Lichfield* v. *Simpson*, 8 Q. B. 65.

be specified in the summons; and upon the appearance of the party charged, or upon proof that the summons was personally served upon him or left at his last known place of abode in England, and if it appear to the last-mentioned justices that he has failed to render any such account, or to produce and deliver up any such vouchers or receipts, or any such books, papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, it shall be lawful for them, by warrant under their hands and seals, to commit the offender to gaol, there to remain, without bail, until he shall have rendered such account, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made; and if it appears that the party charged has failed to pay over any such monies as aforesaid, and that he still fails or refuses so to do, it shall be lawful for the last-mentioned justices, by a like warrant, to cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress to commit him to gaol, there to remain, without bail, for a period not exceeding three months, unless such monies be sooner paid: Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, it shall be lawful for such justice, without previous summons, by warrant under his hand and seal, to cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: Provided also, that no such proceed-

Power to levy by distress.

ing shall be construed to relieve or discharge any surety of the offender from any liability whatsoever.

Metropolitan and district boards and vestries to provide proper offices, and cause daily attendance to be given.

LXVI. The metropolitan board of works and every such district board and vestry respectively shall provide and maintain such offices within their respective district or parish as may be necessary for the purposes of this Act, and shall take care that their clerk, or some person duly authorized by them in that behalf, attends at their office daily (Sundays, Christmas Day, and Good Friday, and days appointed for any general fast or thanksgiving, alone excepted), for the purpose of receiving notices and transacting the ordinary business of the board or vestry under this Act.

Duties and Powers of Vestries and District Boards (*n*).

"Vestry" in following provisions to mean vestry of a parish in schedule (A.)

LXVII. Where in the provisions hereinafter contained any expression is used referring to the vestry of a parish, such expression shall be construed as referring only to the vestry of a parish mentioned in schedule (A.) to this Act, unless such construction be repugnant to the context.

(*n*) By the Metropolis Gas Act, 1860, 23 & 24 Vict. c. 125, certain powers are conferred upon vestries and district boards with respect to the supply of gas. By the 4th section of that Act they are, with the metropolitan board, included under the expression "local authority." See sect. 7 as to complaints to secretary of state as to quantity or quality of gas, and the following section in relation to inquiries and reports of inspectors, the 13th as to costs, the 19th, 20th, and 21st as to contracts with gas companies, the 22nd as to the obligations on gas companies to light streets on the requisition of the local authority, the 23rd as to the provision and maintenance by local authority of lamp-posts and lamps, &c., the 27th requiring local authority to provide proper apparatus, &c., for testing illuminating power of gas, and authorizing them to pay examiners of gas, the 36th providing for the determination of existing contracts, the 37th fixing charge for gas to be supplied for public lamps, the 38th for the settlement of disputes by arbitration, and the 54th as to the savings of rights, &c., and application to secretary of state when the local authority

Sewers (except main sewers) vested in vestries and district boards (*a*).

LXVIII. Upon the commencement of this Act all

refuses or delays its consent for laying mains or pipes. See the Act, *post*, Appendix, and see Act 25 & 26 Vict. c. 102, *post*.

(*a*) The effect of this section, and of sect. 135, is to vest in the metropolitan board the main sewers enumerated in schedule (D.) to the Act, including the main sewers of the city of London, and all other sewers within the parishes mentioned in schedules (A.) and (B.) in the vestries and district boards. All sewers within the city of London other than the main sewers specified in schedule (D.) remain vested in the commissioners of sewers of the city, who retain all powers relative to sewerage under the City of London Sewers Act, 1848 (11 & 12 Vict. c. 163), which are not transferred to the metropolitan board by virtue of this Act. The sewers existing in Woolwich at the time of the passing of this Act were vested in the local board of health, constituted under the Public Health Act, who, by sect. 238 of this Act, are made subject to the orders of the metropolitan board in relation to sewerage and other matters in the same manner as vestries. None of the main sewers mentioned in schedule (D.) are in that parish, and any future sewers which may be made, either by the metropolitan or local board of health, will be vested in the respective bodies, subject to the power of adoption by the former under the provisions of this Act. Those sewers, belonging to the metropolitan commissioners, which are situate in districts without the limits of the metropolis as at present defined, are excepted from the property transferred by sect. 148, and the duty of maintaining them has devolved on the surveyors of highways, who exercise their powers under the General Highway and Nuisances Removal Acts. At the time of the Metropolis Management Act coming into operation, parts of the parish of St. Leonard, Bromley, one of the parishes mentioned in schedule (B.), were within the limits of the Havering and Dagenham commission of sewers, which commission, for some time after the passing of this Act, collected rates and exercised jurisdiction within them; but it is understood that those parts have been excluded from the limits of the commission for those levels since issued. There are certain local sewers in the metropolis forming the boundary of two parishes, the property in which seems to be divided. These are in practice cleansed and repaired by arrangement between the parishes concerned. The word "sewer" applies to the subject matters specified in the 250th section of this Act, as qualified by the 112th section of the 25 & 26 Vict. c. 102. See observations of *Kindersley*, V.C., in *Sutton* v. *Mayor, &c., of Norwich*, 27 L. J. (N. S.) Ch. 739, as to the meaning of the word "sewer." It originally meant a sea-wall, weir, dam or defence against tides and inundations, or, according to

sewers vested in the metropolitan commissioners of

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others, a trench supported by banks for carrying fresh waters into the sea. According to the case of the *Poplar District Board* v. *Knight*, 28 L. J. (N. S.) 37, the word *sewer*, as used in the 204th and other sections of this Act, includes the wall and bank of the river Thames, preserving the low lands contiguous from inundation. It has, however, long since been extended beyond its original signification, and applied to channels both open and covered for the conveyance of feculent drainage. The situation of the sewers dealt with by the present Act is for the most part well known and ascertained, the greater part of them being laid down upon the sheets of the subterranean survey in the possession of the metropolitan board of works. Before the passing of the Sewers' Act, 3 & 4 Will. 4, c. 22, commissioners of sewers, in general, had not such a possession of their works as enabled them to maintain an action of trespass against parties injuring them; *Duke of Newcastle and others* v. *Clarke*, 8 Taunt. 602; and see *Stracey* v. *Nelson*, 12 M. & W. 535. The language of the present section, which is founded upon the provisions of the 11 & 12 Vict. c. 112, the Metropolitan Sewers Act, 1848, now expired, gives boards and vestries such an interest in the works constructed by them, or subject to their jurisdiction, as would enable them to maintain actions against parties injuring them, the nature of that interest being such as is described in *Stracey* v. *Nelson*, *supra*. The terms of the present enactment vesting the sewers, &c., in boards and vestries are very similar to those used in sect. 96, vesting highways in vestries, &c., under which it seems to have been supposed that the soil of highways has become vested in the district boards and vestries; *Wandsworth Board of Works* v. *London and South Western Railway Company*, 8 Jur. (N. S.) 691, Ch.; but see *Stracey* v. *Nelson*, *supra*, and note (*c*) to sect. 96, *post*. Generally, these bodies have the property in their buildings and works, but not in the soil and bed of the stream, banks, watercourses, &c., within their survey, cognizance, and management. In some instances, however, in which the former sewers commissioners purchased land for straightening or otherwise improving sewers, or other objects, they are the owners of the soil. So, also, in the case of the land purchased for the purposes of the outfall works of the main intercepting drainage, the metropolitan board have the absolute property in such land. The present enactment does not contain any words conferring upon boards and vestries the powers and authorities given by ordinary sewers commissions, therefore they cannot proceed by presentment, amerciament, &c., for annoyances and encroachments. But sections 68 and 69 of the 25 & 26 Vict. c. 102, impose penalties for various

sewers (*b*) which are situate in any parish mentioned in schedule (A.) to this Act (except such sewers as are mentioned in schedule (D.) to this Act), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto appertaining, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the vestry of such parish; and all sewers vested in the said metropolitan commissioners which are situate within any district mentioned in schedule (B.) to this Act, except as before excepted, with all such works and things as aforesaid appertaining thereto, and all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the board of works, for such district; and all sewers made and to be made within any such parish or district, except sewers and works vested or to be vested in the metropolitan board of works, as hereinafter, mentioned shall be vested in such vestry and board respectively.

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acts of wrongful interference with sewers. Neither the present section nor the 135th, vesting the main sewers in the metropolitan board, contains the exception found in the 7th section of the Metropolitan Sewers Act, 1848, (11 & 12 Vict. c. 112,) vesting sewers in those commissioners of "sewers made or to be made by any person or persons, for his or their own profit, or for the profit of the proprietors or shareholders." That exception was borrowed from the Public Health Act, into which it was introduced in order to preserve the rights of the Cheltenham Sewers Company, acting under a local Act. See Lawes' edition of the Public Health Act, 11 & 12 Vict. c. 63, note to the 44th section. It would be difficult to assign any practical operation to those words as regards the sewers of the metropolis, but their omission from the present enactment may obviate attempts to make claims upon and control the action of the bodies charged with the jurisdiction over sewers which might be attended with inconvenience.

(*b*) See 11 & 12 Vict. c. 102, s. 7 (now expired), as to sewers vested in the metropolitan commissioners of sewers.

Vestries and district boards to repair, &c. all sewers vested in them, and from time to time to construct new ones, &c.

LXIX. The vestry of every parish mentioned in schedule (A.) to this Act, and the board of works for every district mentioned in schedule (B.) to this Act, shall (subject to the powers by this Act vested in the metropolitan board of works (*c*)) from time to time repair and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made(*d*), repaired, and maintained such sewers

(*c*) See proviso to this section prohibiting the making of new sewers without the previous approval of the metropolitan board of works, and the 138th section, authorizing the metropolitan board to make orders for controlling vestries and district boards as to construction, &c., of sewers, and generally in relation to sewerage. And see now ss. 45, 46, 47, 48, 49, 50, and 51 of 25 & 26 Vict. c. 102, *post*, as to the course to be pursued by vestries, district boards, &c., with respect to the construction of new sewers. See also sect. 83, of same Act, giving power to the metropolitan board of works to make byelaws for the guidance of vestries, &c., in the construction of sewers.

(*d*) Though the language of this enactment is imperative, a discretion must be allowed to vestries, &c., as to the time at which such works should be executed; and, in other respects, therefore, a writ of *mandamus* which ordered the vestry of a parish, immediately after the receipt of the writ, to cause to be made such sewers and works as might be necessary for effectually draining a particular part of the parish, and to take all necessary steps in that behalf, without showing that a reasonable time had elapsed, or that there was a present duty to drain that particular part at once, or that the approval of the metropolitan board had been obtained, was held to be defective; *R.* v. *The Vestry of St. Luke, Chelsea*, 31 L. J. (N.S.) Q. B. 50. It was suggested in the judgment that the proper form might be to issue a *mandamus* ordering the vestry to go before the metropolitan board of works and get their approval, and in the event of such approval being obtained, another *mandamus* might be issued ordering the vestry to make the sewers. But looking to the grounds of the judgment, showing that a discretion must necessarily be vested in the body charged with the duty as to the time of doing the works, the manner of providing funds, and the relative urgency of the works in various localities, there seems little reason to anticipate that such a writ could be supported. See a full report of this case, setting out the return *in extenso*, in 26 J. P. 85. See *Ex parte Champ*, 20 J. P. 756, where a rule for a *mandamus* to the same vestry to make sewers in another part of the same

and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district (*e*), and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district to be raised, strengthened, or altered or repaired, where it may be necessary so to do, for effectually draining, or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any turnpike road (*f*), or any street or place laid out as or intended for a street (*g*), or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever (*h*), making compensation (*i*) for any damage done thereby as hereinafter provided; and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses,

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parish had been discharged for want of a sufficient demand and refusal.

(*e*) See sect. 58 of 25 & 26 Vict. c. 102, *post*, authorizing, subject to certain conditions, the construction of sewerage works by vestries and district boards beyond the limits of the metropolis; sect. 44 of 25 & 26 Vict. c. 102, *post*, authorizing owners of land to construct sewers for drainage thereof, at their own expense, and empowering vestries, &c., to contribute to the cost out of the rates; and 25 & 26 Vict. c. 102, s. 52, *et seq.*, as to construction of sewers by vestries at the cost either in whole or in part of private parties.

(*f*) See as to notice and other requirements in breaking up turnpike roads, 25 & 26 Vict. c. 102, s. 33, *post*.

(*g*) See interpretation of word "street," sect. 250. See 25 & 26 Vict. c. 102, s. 84, *post*, empowering vestries, &c., with consent of metropolitan boards, to stop up streets during their works.

(*h*) As to the right of carrying sewers through private property, see notes (*i*) and (*k*) to sect. 135; and sects. 34 and 35 of 25 & 26 Vict. c. 102, *post*, as to notices, plans, &c. of works affecting railways and canals.

(*i*) As to compensation for damage, see sect. 225, and note (*k*) to sect. 135, as to claims for compensation and actions against boards and vestries.

and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the metropolitan board of works (*k*): Provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance; and if by reason thereof any person shall be deprived of the lawful use of any covered (*l*) sewer, it shall be the duty of the vestry or district board to provide some other sewer or a drain as effectual for his use as the sewer of which he is so deprived: Provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used.

Power to vestries and district boards to do works of improvement in sewers, &c., the expense of which to

LXX. Wherever any party is, by prescription, by reason of tenure, or otherwise, liable by law to maintain or do any repairs to sewers, banks, watercourses, or works in any such parish or district which the vestry or district board judge it necessary to alter or improve, it shall be lawful for them to make such alterations or

(*k*) See proviso to sect. 58 of 25 & 26 Vict. c. 102, *post*, making this consent necessary in all cases where new sewers are constructed by any vestry, district board, or other body having control over sewers within the metropolis; and see note (*c*), *supra*.

(*l*) The word "covered" does not occur in the 38th section of the Metropolitan Sewers Act (11 & 12 Vict. c. 112), from which this provision has been adopted. This addition will exclude claims by parties draining into open watercourses.

be divided between the party liable and the parish or district (*a*).

improvements therein as they think proper, and to divide the expense of such alterations or improvements between the party liable to such maintenance or repairs and the parish, district, or persons who would have been wholly liable to the expense of such alterations or improvements if no party had been liable as aforesaid, so as to throw on the party liable to

(*a*) As to the obligations of individuals in respect of sewers' works in general, see Callis, p. 139; Serj. Woolrych, Law of Sewers, 2nd ed. 68, *et seq.*, and 15th sect. of 3 & 4 Will. 4, c. 22. Several examples of liabilities of this nature are found in the records of the former sewers' commissions existing within the metropolitan limits. Under the Greenwich commission various parties were held liable to do works of repair, raise the river wall, scour and bottom ditches, cut weeds, &c., by reason of tenure. This commission, the limits of which extended from the head of the Ravensbourne to Lombard's Wall, in the county of Kent, as also the Surrey and Kent commission, having jurisdiction from East Moulsey, in Surrey, to the river Ravensbourne, in Kent, were both subject to the provisions of the Act 3 & 4 Will. 4, c. 22. The course pursued by the Greenwich commission was to issue their precept to the sheriff to return a jury, and the jury impanelled were sworn by the court to inquire (amongst other matters) of the persons, &c. who, by reason of their tenure of certain lands, tenements, or hereditaments, were bound to repair or contribute to the repair of walls, defences, &c., or do other works the cost of which was not payable out of the general taxes and levies raised within the level, and also to inquire what works were necessary. The jury then heard evidence, and delivered their presentment into court; upon which the court decreed the works, and ordered notices to be served upon the parties ordering their execution, on pain of forfeiting certain sums which were specified. Subsequently the wall reeve presented cases of non-repair. Besides the maintenance, &c. of ditches and causeways, some of these works extended to the raising or repairing of the bank or wall of the river Thames, and at one time the liability to perform such works seems to have been considered a ground of exemption from the general assessments imposed upon the level. There are, also, a few cases of presentments by juries of similar obligations attaching to individuals in the parish of Rotherhithe and elsewhere within the Surrey and Kent commission, such as to strengthen and heighten the bank and wall of the Thames, so as to resist the tidal waters; but there is reason to doubt whether, under that commission, those liabilities were, in later times at least, ever enforced by adverse proceedings. Similar liabilities also existed under the Poplar commission, the court

such maintenance or repairs such part of the expense of alterations or improvements as may be equal to what would be incurred for such maintenance or repairs, and to throw on the parish, district, or persons aforesaid the residue of such expense, and to settle and adjust such proportions either by some general regulation or by order in each particular case, as they may think proper: Provided always, that nothing in this Act contained shall exempt from liability to do any works, or to pay the whole cost thereof, any person who, by prescription, by reason of tenure, or otherwise by law, is so liable.

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proceeding on the presentment of the Marsh jury, and compelling the execution of the requisite works. The terms of the 61st sect. of the 3 & 4 Will. 4 excluded this commission and the other sewers' commissions in Middlesex from its operation; and the course of proceeding under it somewhat differed from that provided under the commissions south of the Thames, to which the Act applied; but obligations generally similar in character to those existing under the Greenwich commission were habitually enforced. There is some difficulty attending the mode of proving and enforcing liabilities of this nature under the present Act. The ordinary mode of establishing such a liability is by the inquisition of a jury. The present Act, however, contains no provision for summoning a jury. The 144th sect. of the 11 & 12 Vict. c. 112 (Metropolitan Sewers Act, 1848), provided that the Sewers Act, 3 & 4 Will. 4, c. 22, should not apply to any commission issued under it, but the 96th sect. expressly empowered the metropolitan commissioners of sewers, on the trial of *appeals against sewers' rates*, to try the question of the appeal by a jury in the same manner as a traverse of a presentment of rateability was triable according to the laws and usages of sewers, and on the trial of such appeals it is obvious that questions affecting liabilities of this nature must sometimes have incidentally arisen. The 59th sect. of the same Act empowered the metropolitan commissioners to do or direct any work to be done, and exercise all the powers of the Act in relation thereto, upon the information or presentment of *their surveyor*, without any other presentment in relation thereto; and though the 68th section of the present Act transfers to the vestry, &c. all the rights of their predecessors *concerning or incident to* sewers, those words do not seem to include the power of proceeding by presentment. The liability might probably be established by production of the inquisitions, decrees, &c. of the sewers' commissioners, and by proof that

Gullyholes, &c. to be trapped (*b*).

LXXI. Every district board and vestry shall, by providing proper traps or other coverings, or by ventilation, or by such other ways and means as shall be practicable for that purpose, prevent the effluvia of sewers from exhaling through gullyholes, gratings, or other openings of sewers in any of the streets or other places within their district or parish.

Vestries and district boards to cause sewers to be cleansed, &c. (*c*).

LXXII. Every vestry and district board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or

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they were obeyed, though there is authority to show that proof of obedience might be dispensed with. In *R.* v. *Leigh*, 2 P. & Dav. 357; S. C. 10 Ad. & E. 398, orders of courts of sewers commencing more than seventy years previously were admitted in evidence, though it was not shown that such orders had been complied with. The court in that case laid it down that such orders were good evidence as adjudications by a court of competent jurisdiction over the subject-matter, unless they were affected by proof of fraud or collusion, and that at so great a distance of time their execution might be presumed. If the works were executed by a vestry or district board the expenses incurred in carrying them out might, perhaps, be expenses recoverable under the 226th sect. An indictment at common law probably lies against a party liable *ratione tenuræ* to repair, &c. See *R.* v. *Earl Cadogan*, 5 B. & Al. 902, where on an indictment for not repairing a bank and wall next the Thames, whereby a highway in the parish of Chelsea was in danger of being flooded, the court refused to grant an inspection of the court rolls of the defendant's manor. In *R.* v. *Gamble*, 11 A. & E. 69, the court refused a *mandamus* to landowners liable *ratione tenuræ* to amend and heighten banks, but that was on the ground that the applicants, the conservators of the Bedford level, had the authority of commissioners of sewers, and might proceed by presentment. See *R.* v. *Commissioners of Pagham*, 1 B. & C. 255; *R.* v. *Ouse Bank Commissioners*, 3 A. & E. 344.

(*b*) See notice to metropolitan board, &c. required before trapping their sewers, 25 & 26 Vict. c. 102, s. 27, *post*.

(*c*) See action against a district board for neglect to keep a sewer clean, *Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144; and as to right of landowners to apply for an injunc-

under ground, such reservoirs, sluices, engines, or other works as may be necessary.

Vestry or district board in certain cases may compel owners, &c. of houses to construct drains into the common sewer.

LXXIII. If any house (*d*) or building, whether built before or after the commencement of this Act, situate within any such parish or district, be found not to be drained by a sufficient drain communicating with some sewer, and emptying itself into the same, to the satisfaction of the vestry or board of such parish or district, and if a sewer of sufficient size be within one hundred feet of any part of such house or building, on a lower level than such house or building, it shall be lawful for the vestry or board, at their discretion, by notice in writing, to require the owner of such house or building forthwith, or within such reasonable time as may be appointed by the vestry or board, to construct and make from such house or building into any such sewer a covered drain, and such branches thereto, of such materials (*e*), of such size, at such level, and with such fall as shall be adequate for the drainage of such house or building, and its several floors or storeys, and also of its areas, waterclosets, privies, and offices, (if any,) and for conveying the soil, drainage, and wash therefrom into the said sewer, and to provide fit and proper paved or impermeable sloped surfaces for conveying surface water thereto, and fit and proper sinks, and fit and proper syphoned or otherwise trapped inlets and outlets for hindering stench therefrom, and fit and proper water supply (*f*), and water supplying pipes,

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tion to restrain drainage causing nuisance, *Attorney-General* v. *Council of Borough of Birmingham*, 4 Kay & Johns. 528.

(*d*) The word "house" under the Public Health Act, 11 & 12 Vict. c. 63, was held to apply to a toll-house on a turnpike road; *Trustees of Tunstall Turnpike Roads* v. *Lowndes*, 20 J. P. 374.

(*e*) See as to the discretion given to vestries to determine the material to be used, *Austin* v. *St. Mary, Lambeth*, cited in note (*h*) to sect. 76, *post*.

(*f*) See now sect. 67 of 25 & 26 Vict. c. 102, *post*, authorizing vestries to compel owners of houses to obtain supply of water, at a rate not exceeding 3*d.* per week, and as to proceedings in case of deficient supply.

cisterns, and apparatus for scouring the same, and for causing the same to convey away the soil, and fit and proper sand traps, expanding inlets, and other apparatus for hindering the entry of improper substances therein, and all other such fit and proper works and arrangements as may appear to the vestry or board, or to their officers, requisite to secure the safe and proper working of the said drain, and to prevent the same from obstructing or otherwise injuring or impeding the action of the sewer to which it leads; and it shall be lawful for the said vestry or board to cause the said works to be inspected while in progress, and from time to time during their execution to order such reasonable alterations therein, additions thereto, and abandonment of part or parts thereof, as may to the vestry or board or their officers appear, on the fuller knowledge afforded by the opening of the ground, requisite to secure the complete and perfect working of such works; and if the owner of such house or building neglect or refuse, during twenty-eight days after the said notice has been delivered to such owner, or left at such house or building, to begin to construct such drain and other works aforesaid, or any of them, or thereafter fail to carry them on and complete them with all reasonable despatch, it shall be lawful for the vestry or board to cause the same to be constructed and made (*a*), and to recover the expenses to be incurred thereby from such owner in the manner hereinafter provided (*b*).

Penalty on owner, &c. for neglect.

Provision for combined drainage of blocks of houses (*c*).

LXXIV. If it appear to the vestry or board of any parish or district that a group or block of contiguous houses, or of adjacent detached or semi-detached houses, may be drained and improved more economically or ad-

(*a*) See sect. 64 of 25 & 26 Vict. c. 102, *post*, authorizing vestries under this and the 74th, 76th, 81st, 85th, and 86th sections, to execute the works or proceed for the penalties.

(*b*) See ss. 225 and 226, *post*.

(*c*) By the 250th section, any drain for draining a group of houses by a combined operation under the orders of

vantageously in combination than separately, and a sewer of sufficient size already exist or be about to be constructed within one hundred feet of any part of such group or block of houses, whether contiguous, detached, or semi-detached, it shall be lawful for such board or vestry to order that such group or block of houses be drained and improved, as hereinbefore provided, by a combined operation.

No house to be built without drains constructed to the satisfaction of the vestry or district board (*d*).

LXXV. It shall not be lawful to erect any house or other building in any parish mentioned in schedule (A.) to this Act, or in any district mentioned in schedule (B.) to this Act, or to rebuild any house or building within any such parish or district which has been pulled down to or below the floor commonly called the ground floor, or to occupy any house or building so newly built or rebuilt, unless a drain and such branches thereto and other

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vestries, falls within the definition of a drain as contradistinguished from a sewer. But as combined drainage was laid down before the passing of the Act under the direction of the Metropolitan Commissioners of Sewers, and claims were made on the vestries to maintain such drainage at the public cost, the meaning of the word "drain" has been extended by the 112th section of the 25th & 26th Vict. c. 102, so as to include drains of this nature laid down before the passing of the Act.

(*d*) This clause is founded on the 46th section of the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 120, but it omits the provision which was contained in that enactment, authorizing the commissioners to compel the owner or occupier of the house to continue *sewers* situate within a certain distance of the premises to be drained. The intention of this Act seems to be to confine the obligations of private parties to the making of drains; and to throw the responsibility and cost of constructing sewers on public bodies. See *Clarke* v. *Vestry of Paddington*, cited in note (*g*) to s. 76. See now the provisions relating to the construction of sewers in new streets, and in streets in which there had either been no sewers or only open sewers, 25 & 26 Vict. c. 102, s. 52, *et seq. post*, and s. 57, giving an appeal to the metropolitan board against orders of vestries, &c., as to the amount or apportionment of the expenses of constructing sewers wholly or partly at the cost of private parties.

connected works and apparatus and water supply as hereinbefore mentioned be constructed and provided to the satisfaction of the surveyor of the vestry of such parish or board of works for such district, of such materials, of such size, at such level, and with such fall as they may direct, so that the same shall be available for the drainage of the lowest floor of such house or building, and of its several floors or stories, and also of its areas, waterclosets, privies, and offices (if any), which drain shall lead from such house or building, or the intended site of such house or building, to such sewer, already made or intended to be constructed near thereto, as the vestry or board shall direct and appoint, or if there be no such sewer existing or intended to be constructed within one hundred feet of any part of the intended site of such house or building, then to such covered cesspool (*e*) or other place, not being under any dwelling house, as the vestry or board shall direct; and whenever any house or building is rebuilt as aforesaid, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain and such branches thereto and other works and apparatus as are hereinbefore required, and for that purpose the levels shall be taken and determined under the direction of the vestry or district board.

Notice of buildings to be given to the vestry or

LXXVI. Before beginning to lay or dig out the foundation (*f*) of any new house or building within any such parish or district, or to rebuild any house or building

(*e*) See 25 & 26 Vict. c. 102, s. 66, *post*, as to temporary provision for drainage into cesspools or tanks where there are no proper sewers within two hundred feet.

(*f*) By the 25 & 26 Vict. c. 102, s. 88, *post*, any person omitting to give this notice is made liable to a penalty not exceeding 5*l*., and to a continuing penalty of 40*s*. for every day such omission shall continue. In the case of the *Poplar District Board of Works* v. *Knight*, 28 L. J. (N. S.) M. C. 37, the court of Queen's Bench intimated an opinion that a house built with foundations placed on the surface without any digging out was within this section.

therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days' notice in writing shall be given to the vestry or board by the person intending to build or rebuild such house or building or to make such drain; and every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with this Act, and as the vestry or board shall order, and every such drain (*g*) shall be made in such direction, manner, and form, and of such materials (*h*) and workmanship, and with such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board; and the vestry or district boards shall make their order in relation to the matters aforesaid, and cause the same to be notified to the person from whom such notice was received within seven days (*i*) after the receipt of such notice, and in default of such notice, or if such house, building, or drain, or branches thereto, or other connected works and apparatus and water supply, be begun, erected, made, or provided in any respect con-

district board before commencing the same.

(*g*) They have no power to order a person to construct *a sewer*, and where a party had in misapprehension of his rights built one and the vestry had ordered him to continue it, and on non-compliance threatened to put their powers in force, an injunction was granted to restrain them from demolishing or injuring the houses or preventing their completion; *Clarke* v. *Vestry of Paddington*, 5 Jur. (N. S.) Ch. 138.

(*h*) Under this section it was held that the vestry have the right to determine which of two descriptions of pipes should be used, and the vestry having required Lambeth pipes, the court refused on information to restrain them from entering upon the plaintiff's premises for the purpose of taking up works constructed with Aylesford pipes; *Austin* v. *Vestry of St. Mary, Lambeth*, 27 L. J. (N. S.) 677, Ch.

(*i*) See extension of this period by s. 63 of 25 & 26 Vict. c. 102, *post*.

trary to any order of the vestry or board made and notified as aforesaid, or the provisions of this Act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered, and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended, or remade, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof in the manner hereinafter provided (*k*).

Power to branch drains into sewers constructed by metropolitan board, or any vestry or district board, under certain regulations.

[LXXVII. (*l*) It shall be lawful for any person, at his own expense, to make or branch any drain into any of the sewers vested in the metropolitan board of works or any vestry or district board under this Act, or authorized to be made by them under this Act, such drain being of such a size, and of such conditions, and branched to such sewer, in such a manner and form of communication in all respects as the vestry or board shall direct or appoint; and in case any person make or branch any drain into any of the said sewers so vested in the vestry or board, or authorized to be made by them under this Act, of a larger size, or of different conditions, or in a different manner and form of communication than shall be directed or appointed by the vestry or board, every person so offending shall for every such offence forfeit a sum not exceeding fifty pounds.]

Penalty.

Power to metropolitan board or vestry or district board to branch private drains into sewers, at the expense of the party to

LXXVIII. Whenever it is necessary to open any part of the pavement of any street or public place, for the purpose of making or branching any private drain into any of the sewers or drains vested in the metropolitan board of works, or any vestry or district board under this Act, or authorized to be made by them under this Act, it shall be lawful for the vestry or board, in case they think fit so to do, to make so much and such part

(*k*) As to the recovery of expenses, see ss. 225, 226, *post*.

(*l*) This section is repealed by the 61st section of the 25th and 26th Vict. c. 102, *post*, which introduces new provisions with respect to branching drains into sewers.

of such private drain, and also to construct so much and such part of the work necessary for branching the same into the public sewers as shall be under or in any street, and to recover the expenses incurred thereby from the owner of the house, building, or ground to which such private drain belongs, in the manner hereinafter provided. (*n*)

whom they belong. (*m*)

LXXIX. It shall be lawful for any such vestry or board to contract and agree with the owners or occupiers of any houses, buildings, or ground that any drains required to be made, altered, or enlarged by such owners shall be constructed, made, altered, and enlarged by the vestry or board; and the cost price of making, altering, or enlarging such drains, as certified by the surveyor of the vestry or board, shall be repaid by the owner or occupier so agreeing to the vestry or board, and in default of payment the same may be recovered in the manner hereinafter provided.

Vestry or district board may agree to make house drains at the expense of owners or occupiers.

LXXX. Where any sewer in any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, into which any drain shall be made or branched, has been built since the third day of September, 1813, and before the commencement of this Act, at the expense of any person or body other than any commissioners of

Vestry or district board may order a contribution towards construction of sewers in certain cases. (*o*)

(*m*) A byelaw of the commissioners of sewers for Westminster, &c. required, where leave had been obtained for laying a drain into a sewer, that the opening into the sewer should be made, and the drain built for a length of three feet four inches from the sewer, according to a plan, &c. approved by the commissioners by a workman employed by them, and paid by the party. And it was the practice under the metropolitan commissioners of sewers for the contractor of the commissioners to lay the first length, and charge the party for so doing.

(*n*) As to recovery of expenses, see ss. 225, 226, *post*.

(*o*) See the sect. 50 of 25 & 26 Vict. c. 102, *post*, extending this provision to main sewers, and to sewers built since 1st January, 1856, or hereafter to be built at the cost of private parties.

sewers, the vestry or district board in whom such sewer is vested may order such sum as they may deem just to be paid and contributed by the owner of the house to which such drain belongs towards the expense of the construction of such sewer, which sum shall, on the receipt thereof by such vestry or board, be paid over to the person or body aforesaid, and such vestry or board may, if they see fit, order and accept payment of such sum, with interest after a rate not exceeding 5*l.* for the 100*l.* by the year, by instalments within any period not exceeding twenty years.

Penalty on erecting or rebuilding houses without proper water-closets, &c.

LXXXI. After the commencement of this Act it shall not be lawful newly to erect any house, or to rebuild any house pulled down to the extent aforesaid, within any parish mentioned in schedule (A.) to this Act, or any district mentioned in schedule (B.) to this Act, without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and also furnished as regards the watercloset with suitable water supply and water supply apparatus, and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof; and whosoever shall offend against this enactment shall be liable to a penalty not exceeding 20*l.* (*a*), and if at any time it appear to the vestry or district board of such parish or district that any house in any such parish or district, whether built before or after the commencement of this Act, is without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and with other apparatus and works as aforesaid, the vestry or district board shall, in case the same can be provided without disturbing any building, give notice in writing to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to provide a sufficient watercloset or privy and ashpit so

Power to vestry, &c. to require owners, &c. to provide sufficient water-closets, &c.

(*a*) As to recovery of penalty, see sect. 227, *post*.

furnished as aforesaid, or either of them, as the case may require; (*b*) and if such notice be not complied with, it shall be lawful for the vestry or district board to cause to be constructed a sufficient watercloset or privy and ashpit, or either of them, or do such other works as the case may require, and to recover the expenses incurred by them in so doing from the owner of such house in manner hereinafter provided: Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the vestry or district board a watercloset or privy may be so used, they need not require the same to be provided for each house.

If owners fail, vestry, &c. to cause the work to be done at their expense.

LXXXII. It shall be lawful for any such vestry or board, or for their surveyor or inspector, or such other person as they appoint, to inspect any drain, watercloset, privy, cesspool, or water supply apparatus, or sinks, traps, syphons, pipes, or other works or apparatus connected therewith, within the parish or district of such vestry or board, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing has been given to the occupier of the premises to which such drain, watercloset, privy, cesspool, or water supply apparatus, or other connected works or apparatus as aforesaid, is attached, or left upon the premises, or in case of emergency without notice, to enter, by themselves or their surveyor or inspector and workmen, upon any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

Power for vestries and district boards to authorize inspection of drains, privies, and cesspools.

(*b*) Under this provision, a vestry or district board may require the owner or occupier of a house to provide a sufficient watercloset, and in case of non-compliance, may cause it to be constructed, and may recover the expenses from the owner. *Vestry of St. Luke, Middlesex*, v. *Lewis*, 31 L. J. (N. S.) M. C. 73; but they must exercise their authority with regard to the circumstances of each particular case, and not merely lay down a general rule, such as that all privies in the district shall be turned into waterclosets; *Tinkler* v. *Wandsworth District Board of Works*, 27 L. J. (N. S.) 342, Ch.

Penalty on persons improperly making or altering drains (*a*).

LXXXIII. In case any drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works or apparatus, hereinbefore mentioned, be found, on inspection, not to have been made or provided according to the directions or regulations of the vestry or district board, or contrary to the provisions of this Act, or in case any person, without the consent of the vestry or district board, construct, rebuild, or unstop any sewer, drain, watercloset, privy, or cesspool, which may have been ordered by them not to be made, or to be demolished or stopped up, or in case any person discontinue any water supply, or destroy any connected works or apparatus as aforesaid, or in case any person, without the consent of the vestry or district board, break into any sewer vested in such vestry or board, every person(*b*) so offending shall forfeit and pay any sum not exceeding 10*l.*; and in case the person so making any sewer, drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid, contrary to the directions or regulations of the vestry or board, or contrary to the provisions of this Act, or, without such consent as aforesaid, constructing, rebuilding, or unstopping any sewer, drain, watercloset, privy, or cesspool which may have been ordered to be demolished or stopped up, or discontinuing any water supply or destroying any connected works or apparatus as aforesaid, or breaking into any such sewer as aforesaid, do not, within fourteen days after notice in writing by the vestry or board, cause such sewer, drain, watercloset, privy, or cesspool to be altered or reinstated in conformity with the directions of the vestry or board, or, as the case may be, to be demolished or stopped up, or such water supply to be renewed, or such connected works or apparatus to be restored, then and in every such case the

(*a*) See 25 & 26 Vict. c. 102, ss. 68 and 69, *post*, declaring penalties in case of encroachments on or wrongful interference with sewers.

(*b*) The penalties declared by this and other provisions o the Act are, by 25 & 26 Vict. c. 102, s. 65, *post*, extended to all persons causing the commission of the offence.

vestry or board may cause the work to be done, and the expenses thereof shall be paid by the person who has so offended.

Where no defaults found expenses to be paid by vestry or board.

LXXXIV. If such drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works and apparatus, be found on inspection as aforesaid to be made to the satisfaction of the vestry or board, and in proper order and condition, they shall cause the same to be reinstated and made good as soon as may be, and the expenses of examination, reinstating, and making good such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid, shall be defrayed by the vestry or board, and full compensation (*c*) shall be made by them for all damages or injuries done or occasioned by the examination of any such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid.

Vestry or district board to cause drains, &c. to be put into proper condition, &c. where necessary.

LXXXV. If, upon such inspection as aforesaid, any drain, watercloset, privy, or cesspool appear to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the vestry or board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the inspection was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with by the person to whom it is given, the vestry or board may, if they think fit, execute such works, and the expenses (*d*) incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

Vestry and district board to cause offensive ditches, drains, &c.

LXXXVI. Every vestry and district board shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collec-

(*c*) See ss. 225, 226, as to recovery of compensation.
(*d*) As to recovery of expenses, see ss. 225, 226.

to be cleansed or covered.

tion of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their parish or district; and they shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge of such filth, water, matter, or thing, or to do such other works as the case may require; and if the person to whom such notice is given fail to comply therewith, the vestry or board shall execute such works (*e*) as may be necessary for the abatement of such nuisance, and may recover the expenses thereby incurred from the owner of the premises in manner hereinafter mentioned: Provided always, that it shall be lawful for such vestry or board, where they think it reasonable, to defray all or any portion of such expenses, as expenses of sewerage are to be defrayed under this Act: Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided (*f*), or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorized

Where works interfere with any ancient mill, &c. compensation to be made, or rights therein purchased.

(*e*) See the power conferred upon the local authority, by the 22nd sect. of the Nuisances Removal Act, 18 & 19 Vict. c. 121, to lay down a sewer where any ditch, &c., is a nuisance.

(*f*) See ss. 225, 226.

shall be applicable *to* every such purchase as aforesaid (*g*).

LXXXVII. It shall be lawful for any vestry or district board, where they think fit, to cause the ditches at the sides of or across public roads and byeways and public footways to be filled up, and to substitute pipe or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from such roads and ways thereinto, and from time to time to repair and amend the same; and the surface of land gained by filling up such ditches may, if the vestry or board so think fit and direct, be thrown into such roads and ways, and be repairable as part thereof, and be under the control of the surveyors of the highways, or other person in charge of such roads, byeways, or footways. Power to vestries and district boards to fill up ditches by the side of roads, and substitute pipes.

LXXXVIII. It shall be lawful for every vestry and district board to provide and maintain urinals, water-closets, privies, and like conveniences, in situations where they deem such accommodation to be required, and to supply the same with water, and to defray the expense thereof, and any damage occasioned to any person by the erection thereof, and the expense of keeping the same in good order, as expenses of sewerage, are to be defrayed under this Act. Power to vestries and district boards to provide public conveniences.

LXXXIX. If any vestry or district board desire to transfer to the metropolitan board of works the powers and duties vested in such vestry or district board in rela- Vestries and district boards may transfer their

(*g*) It was laid down by the Master of the Rolls in *Stainton* v. *Woolrych, Stainton* v. *Metropolitan Board of Works and the Lewisham District Board of Works*, 26 L. J. 300, Ch., that the corresponding proviso in the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 50, was not limited to the previous part of that section, but that it extended to any work done or required to be done under the provisions of the Metropolitan Sewers Act. But that cannot be so under this enactment, as it only applies to vestries and district boards, and does not include the metropolitan board.

powers as to sewerage to the metropolitan board of works (*a*).

tion to sewerage and drainage, and a resolution for so transferring such powers and duties be passed by a majority at a meeting of such vestry or district board, specially convened for the purpose of considering the question of such transfer, of which not less than fourteen days' notice shall have been given, and at which there shall be present not less than two-thirds of the whole number of such vestry or board, then such powers and duties, and all sewers and property vested in such vestry or board under this Act, for the purposes of or in connexion with such powers and duties, shall, at the expiration of one month after notice from such vestry or board shall have been given under their seal to the said metropolitan board of such resolution having been passed as aforesaid, become vested in the said metropolitan board, and the provisions of this Act for defraying expenses incurred by such board in the execution of this Act shall extend to expenses incurred by them in the execution of the powers and duties so transferred to them.

All powers relating to paving, &c. to be vested in vestries and in district boards (*b*).

XC. All the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish mentioned in schedule (A.) to this Act, or any part of such parish, now vested in any commissioners, or in any body other than the vestry of such parish, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish or part, or of the inhabitants thereof, (except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or

(*a*) By the 28th sect. of the 25 & 26 Vict. c. 102, *post*, these powers are not to be transferred without the previous consent in writing of the metropolitan board.

(*b*) By the 25 & 26 Vict. c. 102, s. 73, *post*, certain provisions of the General Paving Act, 57 Geo. 3, c. 29, are extended to the metropolis. The 25 & 26 Vict. c. 102, s. 101, *post*, enables vestries and district boards to put an end to any powers of appointment of inspectors of weights and measures existing under any local Acts in their parishes or districts.

other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto,) (*c*) now vested under any local Act of parliament (*d*) in any commissioners, or in any body other than the vestry of such parish, or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the vestry of such parish under this Act; and all the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish included in any district mentioned in schedule (B.) to this Act, or any part of such parish, now

(*c*) The 19 & 20 Vict. c. 112, s. 1, *post*, provides, that where the power of making church rates was vested in an open vestry, or in any meeting in the nature of an open vestry meeting, such power shall not be deemed to have become vested in the vestry constituted under this Act, and the second section saves the rights of any such open vestry or meeting to make church rates or other powers vested in them, or any elected or other vestry, when such vestry or meeting acts exclusively in any district created for ecclesiastical purposes. Sect. 3 of 19 & 20 Vict. c. 112, declares that save as therein-before otherwise provided, all the duties, &c. (including such as relate to the affairs of the church, or the management or relief of the poor, &c.) shall be deemed to have become transferred to the vestries, &c. constituted under this Act, &c., except duties and powers relating to the affairs of the church, &c. vested in guardians, governors, &c. See *Carter* v. *Cropley*, cited in note to sect. 3 of 19 & 20 Vict. c. 112, *post*.

(*d*) See the 247th section, enacting that all Acts of parliament in force in any parish, &c., to which this Act extends, shall, so far as the same are inconsistent with the provisions of this Act, be repealed as regards such parish, &c. See a return made to the House of Commons on the motion of Sir B. Hall, relating to the paving, cleansing, lighting, &c., of each parish and extra-parochial place within the city of Westminster, the borough of Marylebone, &c., and other places included in the weekly bills of mortality; P. P. 127 (ordered to be printed 15th March, 1855). The return, so far as it extends, shows the parishes to which the Metropolitan General Paving Act, 57 Geo. 3, c. 29, the Lighting and Watching Act, 3 & 4 Will. 4, c. 90, or local Acts apply, and other particulars; and see Index to the public and private statutes, from 41 Geo. 3 to 22 Vict., part 2, containing local and personal, local and private Acts, compiled by order of the select committee on the library of the House of Lords.

vested in any commissioners, vestry, or other body, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish, or part, or of the inhabitants thereof (except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto), now vested under any local Act of parliament in any commissioners, vestry, or other body, or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the board of works for such district; and the provisions of every such Act of parliament as aforesaid shall be applicable to the vestry of every parish mentioned in the said schedule (A.) and to every such district board accordingly, and the offices of all commissioners and persons whose powers are determined by this Act shall cease and be determined, and there shall be no new appointment or election to any such office.

Saving as to baths and washhouses, metropolitan burials, markets, and charitable trusts Acts.

XCI. Provided always, that, save as regards the appointment of auditors, nothing in this Act shall divest the vestry of any parish, or any commissioners or burial board appointed by any vestry, of any powers or property vested in them respectively under the provisions of the Act of the session holden in the ninth and tenth years of Her Majesty, chapter seventy-four, or any Act amending the same, or under the provisions of the Act of the session holden in the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, or any Act amending the same, or in anywise affect the provisions of any of the said Acts (*e*); and nothing in this Act shall extend

(*e*) See 15 & 16 Vict. c. 85, an Act to amend the laws concerning the burial of the dead in the metropolis, amended by 16 & 17 Vict. c. 134, and 20 & 21 Vict. c. 35.

to or affect any rights, privileges, powers, or authorities vested in any persons in reference to any market, or any powers or rights for or in relation to the administration of any charitable trusts, save that any powers or rights in relation to any such trusts vested or which would have become vested in the existing vestry of any parish shall be vested in the vestry of such parish as constituted by this Act.

Expenses incurred under existing powers relating to paving, &c. to be deemed expenses incurred in execution of this Act.

XCII. Provided also, that all expenses of paving, lighting, watering, cleansing, or improving any parish or any part of any parish mentioned in either of the schedules (A.) and (B.) to this Act, and all other expenses in relation to the regulation, government, or public concerns of any such parish or part, or of the inhabitants thereof, except only expenses incurred in relation to the affairs of the church, or for the management or relief of the poor, and other expenses by law payable out of any poor rate, which are not herein provided for, shall be deemed expenses incurred in the execution of this Act, and shall be defrayed accordingly (*f*).

As to the transfer of property.

XCIII. All property, matters, and things whatsoever vested in such commissioners or other body, or in any such officer as aforesaid, under any such Act, in connexion with any such duties or powers as aforesaid, hereby transferred to the vestry of any parish or the board of works for any district, shall upon the commencement of this Act be vested in such vestry or board; and where any such property, matters, or things are vested in any such commissioners or body, or officer, acting for parts extending beyond such parish or district, the metropolitan board of works shall by their order declare in what vestry or district board they shall be vested, and may, if they see fit, apportion (*g*) the same

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(*f*) The provisions for defraying these expenses are contained in the 158th and following sections.

(*g*) It appears by the annual report of the Metropolitan Board of Works, dated the 30th June, 1857, and presented to parliament, that under this provision, and the 180th section,

between the vestries and district boards within whose respective districts and parishes such parts may be situate, and the same shall be vested accordingly; and any money in the possession of any such commissioners or other body, or any such officer, which becomes vested in any such vestry or board under this enactment, and the income of any other such property, until sold or disposed of, shall be applicable, as nearly as may be, for the like purposes as if this Act had not been passed.

Existing contracts, &c. to remain valid.

XCIV. Provided always, that all contracts (*h*), agreements, bonds, covenants, or securities (*i*) made or entered into with or in favour of or by such commissioners or body, or any person in their behalf, or any such officer as aforesaid, before the commencement of this Act, shall remain as valid and effectual and be proceeded on and enforced as if this Act had not been passed; and no action, suit, prosecution, or proceeding commenced or carried on by or against such commissioners or body or any of them respectively shall abate or be discontinued or prejudicially affected by this Act, but shall continue

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the board had made orders effecting apportionments of assets, debts, and liabilities in the case of the Foundling Estate affecting the parishes of St. Pancras, St. George, Bloomsbury, and St. George the Martyr, and of the Commercial-road trust, in which the parishes and hamlets of St. George in the East, Mile-end Old-town, Limehouse, Ratcliff, and Poplar were interested. The apportionments referred to in that report relating to the Ratcliff trust, the Goswell-street trust, the Clapham lighting trust, and the St. George's pavement commission have also since been completed.

(*h*) An action commenced after the Act came into operation, upon a contract for cleansing entered into before its passing with trustees under a local Act for a parish within schedule (B.), was held to be correctly brought against the new body, as the parties having control of the funds ultimately liable to the payment; *Sinnott* v. *The Commissioners for Works for the Whitechapel District*, 27 L. J. (N. S.) C. P. 177. See action on a bond given by the Corporation of London previously to the passing of the Thames Conservancy Act, *Brown* v. *Mayor &c. of London*, 31 L. J. (N. S.) Ch. 280.

(*i*) See provisions for discharging existing liabilities under Acts relating to paving, &c., sect. 180.

and take effect as if this Act had not been passed; and all monies coming to such commissioners or body under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, and which would have been applicable by them if this Act had not been passed for the purposes of any of the duties or powers hereby transferred to any vestry or district board, shall be paid over to such vestry or board, or as they may direct, and be applied for the like purposes; and all monies and liabilities which such commissioners or body, or officer, would have been liable to pay or discharge, under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, out of any rates to be levied under any such powers as aforesaid, if this Act had not been passed, and all costs, damages, and expenses which such commissioners or body, or any of them respectively, might, if this Act had not been passed, have legally defrayed out of any such rates, shall be paid out of rates to be levied by such vestry or board as hereinafter provided.

Existing commissioners, &c. under local Acts continued in office until commencement of this Act.

XCV. Where, under the provisions of any local Act in relation to the paving, lighting, watering, cleansing, or improving of any parish mentioned in either of the schedules (A.) and (B.) to this Act, or any part of any such parish, any election or appointment of any commissioners or persons whose powers are determined by this Act is appointed to take place at any time between the time of the passing of this Act and the time appointed for the commencement thereof, the commissioners or persons now acting under such local Act shall remain in office, and perform and exercise all the duties, powers, and authorities of such Act, until the commencement of this Act, anything in such local Act to the contrary notwithstanding.

Powers and duties of surveyors of highways,

XCVI. Every vestry and district board shall, within their parish or district (exclusively of any other persons whatsoever), execute the office of and be surveyor of

and property vested in them, transferred to vestries and district boards.

highways, and have all such powers, authorities, and duties, and be subject to all such liabilities as any surveyor of highways (*a*) in England is now or may hereafter be invested with or liable to by virtue of his office, under the laws for the time being in force, so far as such powers, authorities, duties, and liabilities are not inconsistent with this Act; but all expenses which under any such law ought to be defrayed by highway rates shall be defrayed by means of the rates to be raised under this Act, and all monies which would be applicable in aid of such highway rates shall be applied in aid of the said rates to be raised under this Act, and no such vestry or board shall be subject to any provisions concerning the accounts of surveyors of highways, or requiring any returns to be made to any special sessions; and all streets being highways (*b*), and the pavements, stones, and other materials thereof, and all other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, or by any vestry or district board under this Act, shall vest in (*c*) and be under the management and control of the

(*a*) See General Highway Act, 5 & 6 W. 4, c. 50; and see 4 & 5 Vict. c. 51; 8 & 9 Vict. c. 71; 12 & 13 Vict. c. 14; and 13 & 14 Vict. c. 99. The 25 & 26 Vict. c. 61, authorizing the formation of highway districts does not apply to the metropolis; see sect. 7 of that Act. A vestry elected under the Metropolis Local Management Act, and thereby required to execute the office of surveyor of highways, is not responsible for an injury occasioned to a passenger by the negligence of workmen employed by the surveyor of such vestry in paving a street in the parish, when the vestry has not given any direction for doing the work; *Holliday* v. *The Vestry of St. Leonard, Shoreditch*, 30 L. J. (N. S.), C. P. 361. A surveyor of highways appointed under 5 & 6 W. 4, c. 50, is not liable to an action for damages arising from the non-repair of the highway; *Young* v. *Davis and another*, 31 L. J. (N. S.) Ex. 250.

(*b*) A street which has been dedicated and used but has not been repairable by the parish in manner provided by 5 & 6 W. 4, c. 50, may nevertheless still be a highway; *Roberts* v. *Hurst*, 15 Q. B. 17; and see *R.* v. *Dayman*, 26 L. J. (N. S.) M. C. 129.

(*c*) Where a railway company was empowered for public convenience to widen a bridge over a lane, but their compulsory

vestry or district board of the parish or district in which such highways are situate.

Provision as to rates already made in parishes mentioned in schedule (A.)

XCVII. Provided always, that all rates made previously to the commencement of this Act for defraying the expenses of executing any duties, powers, and authorities hereby transferred to any vestry or district board, and all highway rates made previously to such commencement, or so much of such respective rates as may not have been levied and paid, shall be levied and collected as if this Act had not been passed (*d*), and, subject to the payment or retainer thereout of any sum or expenses lawfully payable out of such respective rates,

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powers had expired, the court of Chancery refused to interfere by injunction at the instance of the district board; for though the soil of the lane was said to be vested in the board, it was for the convenience of the public, and the inconvenience to the public from the works would be little or none; *Board of Works of Wandsworth District* v. *London & South Western Railway Company*, 8 Jur. (N. S.) 691. It is assumed in this judgment that the soil of the lane was vested in the board, but that seems subject to doubt. Ordinarily the freehold of the highway belongs to the owner of the freehold of the soil, *Sir John Lade* v. *Shepherd*, 2 Str. 1004, who is entitled to all trees upon it and mines under it; 1 Burr. 143; and may bring trespass or ejectment; *Stevens* v. *Whistler*, 11 East. 51; and ordinarily the soil of a turnpike road does not vest in turnpike trustees; *Davison* v. *Gill*, 1 East. 69; and not withstanding the above case, it is doubtful whether the words of this enactment will divest the owner of his property in the soil. The words here are similar in effect to those used in the 68th and 135th sections, vesting sewers in the metropolitan and district boards and vestries, and it was never suggested that the soil of tidal streams, river walls, &c., subject to the order and control of those bodies, was vested in them. See *Stracey* v. *Nelson*, 12 M. & W. 535, where it was decided that the 47th section of the 3 & 4 W. 4, c. 22, did not vest in the commissioners of sewers the property in lands under their view, cognizance, or management. See as to partial dedication of way, &c., *Le Neve* v. *Vestry of Mile-end Old Town*; note to sect. 119. See 25 & 26 Vict. c. 102, s. 71, *post*, as to transfer of property of surveyors of highways to vestries and district boards, and as to payment to them of income of estates subject to trusts for repair of highways.

(*d*) The arrears must be collected by the new vestry; *R.* v. *Ingham*, 20 J. P. 772.

shall, where such rates are levied in a parish mentioned in schedule (A.) to this Act, be accounted for and paid over to the vestry of such parish, and shall, where levied in any other parish, be accounted for and paid over to the board of works for the district in which such parish is comprised, and shall in every case be applied in aid of the rates to be raised for the like purposes under this Act in the particular parish or part in which the said rates so made previously to the commencement of this Act are levied.

Vestry or district board to cause streets to be paved.

XCVIII. It shall be lawful for every vestry and district board from time to time to cause all or any of the streets (*e*) within their parish or district, or any part thereof respectively, to be paved (*f*) or repaired when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes (*g*) in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong.

Owners possessing freehold of courts, &c. to pave the same.

XCIX. Provided always, that whenever the freehold of any court, passage, or public place, not being a thoroughfare, is vested in the owner of any adjoining house, the paving of such court, passage, or public place

(*e*) By sect. 250, the word "street" is not to include the carriage-way of any turnpike road. The 244th section places the footpaths of turnpike roads under the management of vestries and district boards.

(*f*) By sect. 112 of 25 & 26 Vict. c. 102, *post*, the word "pave" includes the formation of the roadway or footway of any street. See, as to the extent of the powers given to vestries, &c., by this section, *R.* v. *Train and others*, 31 L. J. (N. S.) M. C. 169; and as to obstruction by the erection of posts by telegraph company, *R.* v. *United Kingdom Telegraph Company*, 31 L. J. (N. S.) M. C. 166; 26 J. P. 324.

(*g*) See regulations as to the breaking up of pavements by companies, sect. 109, *et seq.*

shall be done by such owner, if deemed expedient or necessary by the vestry or district board (*h*).

Owner of courts to drain them, and keep the pavement, &c. in repair.

C. The owner of any such court, passage, or public place, not being a thoroughfare, shall, if required by the vestry or district board of the parish or district in which the same is situate, to the satisfaction of such vestry or district board sufficiently pave, cover the surface of, or repair the same, and lay, at a proper level, through, over, under, or along such part thereof as such vestry or board may require, a drain, channel, or gutter, and keep such pavement or covering, and drain, channel, or gutter, in good repair, to the satisfaction of such vestry or board; and if any such owner of any court, passage, or public place, not being a thoroughfare, do not sufficiently pave or cover the same as aforesaid, or do not lay down therein such drain, channel, or gutter, or do not repair the same respectively, to the satisfaction of such vestry or board, within fourteen days after notice in writing requiring him so to do has been given to him by such vestry or board, every such person so offending shall forfeit and pay any sum not exceeding 5*l.* (*i*).

Penalty on owners for neglect.

Vaults and cellars under streets not to be made without the consent of the vestry or board (*k*).

CI. No vault, arch, or cellar shall be made under any street without the consent of the vestry or district board of the parish or district in which the same is situate; and all such vaults, arches, and cellars hereafter to be made within any parish or district mentioned in either of the schedules (A.) and (B.) to this Act shall be substantially made, and so as not to interfere or communicate with any drain or sewer under the control of any vestry

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(*h*) See the 78th sect. of the 25 & 26 Vict. c. 102, *post*, as to flagging footways at the cost of the occupiers of property abutting on or next to such footways.

(*i*) The 25 & 26 Vict. c. 102, s. 81, *post*, enables the vestry, &c., in lieu of enforcing the penalty, to execute the works and recover the expenses from the owner.

(*k*) See note (*a*) to sect. 211 as to appeal against proceedings of vestries under this provision.

or district board, or of the metropolitan board of works, without their consents respectively first obtained; and if any vault, arch, or cellar be made contrary to this provision, it shall be lawful for the vestry or district board, or for the metropolitan board of works, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch, or cellar.

Vaults, &c., under streets to be repaired by owners or occupiers.

CII. All vaults, arches, and cellars made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the schedules (A.) and (B.) to this Act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong; and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner in the manner hereinafter provided (*a*).

Provisions as to the occupation of underground rooms as dwellings (*b*).

CIII. Any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, and any cellar, where such room or cellar is or has been occupied separately as a dwelling at or before the time of the passing of this Act, may continue to be so let or occupied if it possess the following requisites; that is to say,

If there be an area not less than three feet wide in every part from six inches below the floor of such room or cellar to the surface or level of the ground

(*a*) As to recovery of expenses, see sects. 225, 226.

(*b*) The 23rd sect. of the Metropolitan Building Act, 18 & 19 Vict. c. 122, *post*, Appendix, lays down rules for the construction of habitable rooms hereafter constructed; and the 3rd rule makes reference to the present provision. See penalties imposed by that section.

adjoining to the front, back, or external side thereof, and extending the full length of such side;

If such area, to the extent of at least five feet long and two feet six inches wide, be in front of the window of such room or cellar, and be open or covered only with open iron gratings;

If there be in every such room or cellar an open fireplace, with proper flue therefrom;

If there be a window opening of at least nine superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation:

And no such room nor any cellar not so let or occupied as aforesaid at or before the time of the passing of this Act shall be so let or occupied unless it possess the following requisites; that is to say,

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof;

Unless the same be at least one foot of its height above the surface of the footway of the street adjoining or nearest to the same;

Unless there be outside of and adjoining the same room or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof up to the surface of the said footway, an open area at least three feet wide in every part;

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain;

Unless there be appurtenant to such room or cellar the use of a watercloset or privy, and an ashpit, furnished with proper doors and coverings kept and provided according to the provisions of this Act;

Unless the same have a fireplace with a proper chimney or flue;

Unless the same have an external glazed window of

at least nine superficial feet in area clear of the frame and made to open in such manner as is approved by the surveyor (*c*) of the metropolitan board of works :

Provided always, that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for access to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window :

And whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, any room or cellar contrary to this Act, shall be liable for every such offence to a penalty not exceeding 20*s.* for every day during which the same continues to be so let or occupied; and every room or cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act; and every district surveyor acting under the Act of the session holden in the seventh and eighth years of Her Majesty, chapter eighty-four, or under any Act repealing or amending the same, shall, without any fee or reward, report (*d*) periodically, and

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(*c*) It is not clear what officer is here meant. The duty seems to appertain to the functions of the "district surveyor," named in the subsequent part of the section; but the appellation of surveyor of the metropolitan board has never been applied to those officers who are appointed under and for the purposes of the Building Act exclusively. This class of duties is ordinarily performed by the "architect" of the board; but though, by the 112th sect. of the 25 & 26 Vict. c. 102, the word "surveyor" includes any officer called "engineer," it does not include the architect. It might be prudent to add to the title of any officer charged with this duty that of "surveyor of the metropolitan board."

(*d*) See now sect. 62 of 25 & 26 Vict. c. 102, *post*, as to reports of district surveyors on underground rooms or cellars occupied as dwellings, not built or constructed in conformity with the rules contained in this section, and as to proof of such occupation.

otherwise, as the said metropolitan board may order, to such board all cases in which rooms or cellars are occupied contrary to this enactment in the district of such surveyor, and also to the respective vestries and district boards all such cases occurring within such parts of his district as may be within their respective parishes and districts; but nothing herein contained shall be construed to disable other persons from enforcing this enactment, and taking proceedings for penalties thereunder.

Power to district surveyors to enter underground rooms and cellars.

CIV. For the purpose of enforcing the enactment lastly hereinbefore contained, it shall be lawful for any such district surveyor, or for any other person, having reasonable grounds for believing that any room or cellar is occupied contrary to such enactment, to demand admission to inspect the same at any time between nine o'clock in the morning and six o'clock in the evening; and if admission be not granted, any justice having jurisdiction in the place where such room or cellar is situate may, on oath before him of belief that such room or cellar is occupied contrary to the said enactment, by order under his hand authorize such district surveyor or other person to enter into and inspect such room or cellar between the hours aforesaid.

If admission refused, justice may issue an order.

Provisions for paving new streets.

CV. In case the owners of the houses forming the greater part of any new street (*e*) laid out or made, or hereafter to be laid out or made, which is not paved (*f*) to the satisfaction of the vestry or district board of the

(*e*) Where a police magistrate dismissed a summons obtained by a vestry for recovering a share of the estimated expenses of paving a new street under this section, on the ground that the street having been dedicated to the public before the passing of the Act, was not a "new street" within the meaning of the Act, the court (*dissentiente* Erle, J.) held that there had been a hearing and adjudication, and that the court had no jurisdiction to interfere; *R.* v. *Dayman*, 26 L. J. (N. S.) M. C. 128.

(*f*) See definition of "pave," 25 & 26 Vict. c. 102, s. 112.

parish or district in which such street is situate, be desirous of having the same paved, as hereinafter mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair; and the owners of the houses (*a*) forming such street shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board) (*b*); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall, on demand, pay to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses.

Vestry or board may declare their

CVI. The vestry or district board of any parish or district may, if they think fit, by notice in writing put

(*a*) As to what houses are situate in a street, see *Baddeley* v. *Gingell*, 1 Ex. 319. By the 77th section of the 25 & 26 Vict. c. 102, *post*, owners of *land* are made liable to contribute to the expenses of paving, and see the provisions in that section for apportioning expenses and accepting payment by instalments.

(*b*) No action lies at the suit of the vestry against an owner for the amount of these expenses, and they can only be recovered by a proceeding before justices, under the 225th section; *Vestry of St. Pancras* v. *Battenbury*, 26 L. J. (N. S.) C. P. 243. See as to recovery of expenses of a similar nature under a local Act, incorporating the Towns Improvement Clauses Act, *The Mayor of Blackburn* v. *Parkinson*, 28 L. J. (N.S.) M. C. 7.

up in any part of any street in their parish or district, not being a highway, declare their intention of repairing the same under this Act, and thereupon the same shall be from time to time repaired by them under the authority of this Act: [Provided (*c*) always, that no street shall be repaired as last aforesaid unless such notice in writing be also given to all persons interested in such street, or if within one month after notice in writing has been put up or given, as last aforesaid, any person interested in such street, or the person representing or entitled to represent any person interested as aforesaid, by notice in writing to the vestry or board object thereto.]

Intention of repairing any street, not being a highway.

Proviso.

CVII. Nothing in this Act shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate.

Act not to authorize the making any thoroughfare without the consent of the proprietor of the estate.

CVIII. It shall be lawful for every vestry and district board, from time to time, to place any posts, fences, and rails on the sides of any footways or carriageways in their parish or district, for the purposes of safety, and to prevent any carriage or cattle from going on the same, and also to place any posts or other erections in any carriageways so as to make the crossings thereof less dangerous for foot passengers, and also from time to time to repair and renew any such posts, rails, or fences, or to

Vestries and district boards may place fences &c. to footways (*d*).

(*c*) This proviso is repealed by the 80th section of 25 & 26 Vict. c. 102, *post*, which introduces new provisions as to the repair of streets not being highways.

(*d*) See as to the liability of a parish surveyor under the General Highway Act, 5 & 6 Will. 4, c. 50, s. 24, with respect to securing horse and foot causeways; *Ellis* v. *Woodbridge*, 29 L. J. (N. S.), M. C. 183; and as to unfenced sewers and ditches, *Cornwell* v. *The Metropolitan Commissioners of Sewers*, 19 J. P. 313. See also *R.* v. *Whitney*, 3 Ad. & Ell. 699.

remove the same, or any other obstruction or encroachment on any carriageway or footway.

Notice to be given by companies to vestries and district boards when pavement &c. is required to be taken up. (*e*)

CIX. No company or person shall break up or open the pavement, surface, or soil of any street, the paving whereof is under the control and management of the vestry or district board of any parish or district, for the purpose of making and laying down any main of pipes, or for any other purpose whatsoever, except in cases of emergency arising from defects in pipes or other works without having previously given three clear days' notice in writing to such vestry or district board, stating in such notice the name of the street and the particular part thereof in which such pavement, surface, or soil is intended to be broken up or opened, the day on which the work is proposed to be commenced, and the time within which it will be completed; and in any such case of emergency as aforesaid such company or person shall, within twelve hours after they or he begin to break up or open such pavement, surface, or soil as aforesaid, give such notice as aforesaid to the said vestry or district board; and no such pavement, soil, or surface shall be broken up or opened for the purpose of laying down any

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(*e*) By s. 73 of 25 & 26 Vict. c. 102, *post*, the powers of the General Paving Act, the 57 Geo. 3, c. 29, to the extent therein expressed, are conferred upon vestries and district boards. That Act contains a series of provisions relative to the breaking up of pavements for the works of water and gas companies, and commissioners of sewers. Many of these, which extend from the 19th to the 23rd section, inclusive, are superseded by the present Act, but others are still in force. See clauses, *post*, Appendix. Any company or persons who take up the pavement and dig trenches in the roadway, without parliamentary power for that purpose, and the householder who authorizes such acts, are liable to be indicted for a nuisance; *R.* v. *The Longton Gas Company*, 29 L. J. (N. S.) M. C. 118. See a complaint by the Westminster district board against the Gaslight and Coke Company for breaking up the pavement of a street, and as to what amounted to an adjudication by the magistrate; *R.* v. *Paynter*, 26 L. J. (N. S.) M. C. 102. See powers of railway companies to interfere with roads, 8 Vict. c. 20, s. 16.

new main of pipes for the conveyance of water during any part of the months of December, January, and February, without the consent of the said vestry or district board; and no gaslight company shall at any time break up or open any such pavement, surface, or soil for the purpose of laying down any new mains of pipes, without the consent in writing of the said vestry or district board; and every company or person offending against this enactment shall for every such offence forfeit a sum not exceeding five pounds (*f*), and shall, within twenty-four hours after notice in writing from the vestry or district board, cause such mains of pipes to be taken up and removed, and the pavement, surface, or soil to be reinstated and put into its former state: Provided always, that any gaslight company may break up or open any such pavement, surface, or soil, for the purpose of laying down and attaching to mains and pipes already existing any new service pipes, on giving to the said vestry or district board, three days at the least before so doing, notice of their intention to break up or open such pavement, surface, or soil for such purpose.

Streets not to be broken up, except under the superintendence of vestry or board.

CX. Whenever it is necessary, from any cause whatever, for any company or person to break up or open the pavement, surface, or soil of any street, such street, and the pavement, surface, and soil thereof, shall be broken up and opened under the superintendence of the vestry or district board of the parish or district in which the same is situate, and in such manner, and as regards gas companies at such time, as they shall direct (*g*); and such company or person shall with all convenient speed complete the work on account of which the same

Streets broken up to

(*f*) As to recovery of this and the other penalties incurred under the provisions relative to breaking up pavements, see s. 227.

(*g*) The Metropolitan Gas Act, 1860, 23 & 24 Vict. c. 125, s. 54, gives a power to the secretary of state to authorize gas mains or pipes to be laid down by companies in accordance with the provisions of that Act, where the local authority refuse or delay their consent.

be reinstated without delay.

is broken up or opened, and fill in the ground and make good (*h*) the pavement or surface or soil so broken up or opened, and carry away the rubbish occasioned thereby, and shall in the meantime cause the place where such pavement or surface or soil is so broken up or opened to be fenced and guarded, and shall set up and maintain upon or against the part of the pavement, surface, or soil so broken up or opened a sufficient light during every night that such pavement or surface or soil is continued open or broken up.

Penalty on persons taking up pavements neglecting to reinstate them, and to place lights during the night-time to prevent accidents.

CXI. If any company or person authorized to break up or open any of the pavement or surface of any street, for the purpose of laying, altering, or repairing any gas, water, or other pipe, or other lawful cause, do not with due diligence cause the ground to be filled in, and the pavement to be reinstated, and the surface to be made good, in a proper and substantial manner, or do not in the meantime fence and guard the same, and affix and maintain lights during the night near to the places where any ground is open, so as to prevent any accident, every such company or other person so offending shall for every such offence forfeit a sum not exceeding 5*l.*, and also a further sum not exceeding 40*s.*, for every day during which such offence continues; and no such pavement shall be considered to have been reinstated in a proper and substantial manner by any such company or other person unless the same have been reinstated with the same or similar materials of the like quality and thickness, and cemented and bound together in the same or in an equally substantial manner, as those of which it was composed, in such manner as is satisfactory to the vestry or board.

Vestry or district

CXII. In case any part of the pavement of any street

(*h*) See the 82nd section of the 25 & 26 Vict. c. 102, *post*, as to the reinstatement of pavements broken up by companies for their works.

be sunk, broken, injured, or damaged, by reason of the breaking, bursting, or want of repair of any pipe belonging to any water, gas, or other company, it shall be lawful for the vestry or district board of the parish or district in which such pavement is situate, if they deem it expedient so to do, to cause notice to be given to the company to whom such pipe is supposed to belong forthwith well and sufficiently to repair and make good such pavement; and if the company to whom such notice is given do not, within forty-eight hours next after such notice, take up such pavement, and well and sufficiently repair and amend such pipe, and cause the ground to be well and sufficiently filled in and rammed down, and the said pavement to be relaid and repaired, to the satisfaction of the vestry or district board, then such company so offending shall for every such offence forfeit and pay any sum not exceeding 20*l.*

Board to direct pavements injured by water or gas pipes to be repaired by company.

Penalty for neglect.

CXIII. Provided always, that in case it be discovered, after any pavement in any street has been taken up by any company, and the ground opened, that the pipe beneath the surface of such pavement required to be repaired and amended does not belong to the company to whom such notice has been given as aforesaid, but to some other company, then such first-mentioned company to whom such notice has been so given as aforesaid shall, within forty-eight hours after such discovery, cause a copy of such notice to be in like manner given to the company to whom such pipe belongs, and require them to obey, conform to, and comply with the original notice, instead of the company to whom such original notice was given as aforesaid; and such other company to whom such last-mentioned notice is given as aforesaid shall reimburse and pay, on demand, to the first-mentioned company, the reasonable costs and charges incurred in and about the taking up of the pavement and opening the ground; and the said last-mentioned company shall obey, conform to, and comply with the said original notice, and execute and perform the work

Company opening the ground to repair a pipe discovered to belong to another company, to give notice to such company, and to be reimbursed expenses.

mentioned therein, in such and the same manner, and within such and the same time, in all respects, as if the said original notice had been given to such last-mentioned company, and they shall be liable to and shall incur the same penalties and forfeitures, on neglect so to do, as they would have incurred and been liable to if the said original notice had been given to them in manner before directed with respect to such first-mentioned company; and if the company by whom such pavement has been first taken up, and who have opened the ground, neglect to give the notice hereby required to the company to whom such pipe actually belongs, such company so neglecting shall for every such offence forfeit and pay any sum not exceeding 20*l.*

Power to vestry or district board to reinstate pavement, and charge the expenses to the parties.

CXIV. Provided also, that whenever the permanent surface or soil of any street is broken up or opened, it shall be lawful for the vestry or district board of the parish or district in which the same is situate, in case they think it expedient so to do, to fill in the ground and to make good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company or person by whom such surface or soil is broken up or opened; and the expenses of filling in such ground and of making good the pavement or soil so broken up or opened shall be repaid, on demand, to the vestry or board by such company or person.

Power for vestry or district board to contract with company for restoring pavements.

CXV. It shall be lawful for the vestry or district board of any parish or district to contract and agree, for any term of years or otherwise, with the several companies or persons authorized to take up any of the pavements or other formed surface of any of the streets within such parish or district, for the filling in, paving, and restoring of such parts of the said streets as may be from time to time required to be taken up for the pur-

pose of laying, altering, or repairing any pipes or other like purpose.

As to the watering of streets.

CXVI. Every vestry and district board shall have full power and authority to cause all or any of the streets in their parish or district to be watered as often as they think fit, and also to cause any wells to be dug and sunk in such public places as they think proper, and also to erect and fix any pumps in any public places, for the gratuitous supply of water (*i*) to the inhabitants of the parish or district.

Vestry or district board to cause footways to be cleansed.

CXVII. Every vestry and district board shall cause any footway within their parish or district to be scraped, swept, or cleansed in such manner and at such times as they think fit; but this enactment shall not relieve any occupier of any house or building or any company whatsoever from any liability (*k*) to scrape, sweep, or cleanse, or cause to be scraped, swept, or cleansed, any part of any such footway, or from any penalty for neglect so to do.

Vestries and district boards may appoint and pay crossing sweepers.

CXVIII. It shall be lawful for every vestry and district board to appoint and pay, or for two or more vestries and district boards to unite, when necessary, in appointing and paying, suitable persons to cleanse and sweep, and to keep properly cleansed and swept daily,

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(*i*) See proviso to sect. 150, prohibiting boards and vestries from using or permitting the use of any of the works therein described for carrying water by supply-pipes to any house or factory for domestic, manufacturing, or commercial purposes. By the 25 & 26 Vict. c. 102, s. 67, they may, subject to the conditions expressed, compel a supply of water for houses; and sect. 70 enables them to provide and maintain drinking fountains.

(*k*) See the provisions in 57 Geo. 3, c. 29, s. 63, relative to the sweeping and cleansing of footways, and the penalties for neglecting to sweep and cleanse footways in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 60.

crossings for passengers over the streets and public thoroughfares within their respective jurisdictions, and in such situations as the said vestries or district boards may from time to time fix and determine, which persons so appointed shall be distinguished by their dress or some distinctive mark as public servants.

Owners, &c. to remove future projections, on notice from vestry or district board (*a*).

CXIX. If any porch, shed, projecting window, step, cellar door or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this Act, shall be an annoyance (*b*), in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street (*c*) in their parish

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(*a*) See the 57 Geo. 3, c. 29, s. 72, containing very comprehensive and summary powers for the regulation and removal of encroachments and projections. Some of these are probably still in force, but in order to apply them with safety they ought to be very carefully compared with this and the following section, and also with the 26th sect. of the Metropolitan Buildings Act, the 18 & 19 Vict. c. 122, recognizing the legality of certain projections and regulating them. In some instances, too, the 75th section of the 25 & 26 Vict. c. 102, which see, *post*, as to buildings beyond the general line, may have a bearing on the subject.

(*b*) Under this enactment it seems to be a question for the magistrate to decide whether or not the projection is, or is not, an annoyance. *Gabriel* v. *Vestry of St. James, Westminster*, 23 J. P. 372.

(*c*) In one of the public roads of the metropolis there is a line of houses on both sides, and immediately in front of the houses, on either side, a paved footway, and between each footway and the carriage-way an intermediate space from thirty-three to fifty-eight feet wide. The occupants of these houses have used the space opposite their respective houses for the purposes of their trades, paying a small yearly rent to the lord of the manor, subject to which use by the occupiers the public have always passed over this intermediate space, where and when these obstructions would permit, as of right. On the space opposite his house a publican erected a moveable shed

or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding 5*l.*, and a further sum not exceeding 40*s.* for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

Penalty for neglect.

CXX. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street (*d*) before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be com-

Vestry or district board may remove existing projections, and make compensation for the same.

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on sockets, with forms, which erection caused no obstruction to the paved footway. *Held*, that this space was not a "street" within the meaning of this Act, and that the shed was not an obstruction which might be removed by the district board, within the meaning of this and the 120th section. *Semble*, however, that this space had been partially dedicated to the public, and could not be considered private property without any public easement; *Le Neve* v. *The Vestry of Mile End Old Town*, 27 L. J. (N. S.) Q. B. 208.

(*d*) See note to last section.

menced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act (*e*), in which case no compensation shall be made.

Hoards to be erected during repairs.

CXXI. Every person who shall build or begin to build, or to take down or begin to take down, any house, building, or wall, or alter or repair, or begin to alter or repair, the outward part of any house, building, or wall, shall, in all cases in which the footway is thereby obstructed or rendered inconvenient, cause to be put up a proper and sufficient hoard (*f*) or fence, with a convenient platform and handrail, if there be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fence, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the vestry or district board of the parish or district in which such house, building, or wall is situate, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same is necessary to prevent accidents, cause such hoard or fence to be well lighted during the night; and every such person who fails to put up such hoard or fence and such platform, with such handrail as aforesaid, or who does not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding

Penalty on not erecting hoards.

(*e*) At the time of the passing of this Act, the 57 Geo. 3, c. 29, referred to in note (*a*), p. 82, *ante*, did not apply to the whole of the places included within the present metropolitan limits. Certain of its provisions have since been extended to the whole of them by the Act of the last session, 25 & 26 Vict. c. 102. Some of the local Acts in force in parishes also contain provisions on this subject.

(*f*) Compare 57 Geo. 3, c. 29, s. 75, *post*, Appendix, as to the erection of hoards, &c.

5*l.*, and a further sum not exceeding 40*s.* for every day during the continuance of such default.

No hoard to be erected without licence from vestry or district board (*g*).

CXXII. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence in writing first had and obtained from the clerk or surveyor of the vestry or district board of the parish or district in which such street is situate; and every such licence shall state the place where and the purpose for which such hoard or fence, scaffold or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed (*h*).

CXXIII. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the vestry or district board, or do any such act as aforesaid in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit (*i*) a sum not exceeding 5*l.*, and a further sum not exceeding 40*s.* for every day during the

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(*g*) The court of Queen's Bench seemed to be of opinion that the granting or refusing this licence was entirely within the discretion of the vestry; *R.* v. *Vestry of St. Leonard's, Shoreditch*, 20 J. P. 404. But at all events they will not interfere when the applicant has taken the matter into his own hands and erected the hoard without leave; *Ibid.*

(*h*) Under the 75th section of the 57 Geo. 3, c. 29, it was held that a surveyor appointed under the Act had no right to remove a ladder placed against a house; *Davey* v. *Warne*, 14 M. & W., 199.

(*i*) See sect. 227, as to recovery of penalties.

continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such enclosure, to be removed and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand (*a*).

Providing against accidents in laying out new streets, &c.

CXXIV. Every person laying out or opening any new street, or building therein, shall, during the operations necessary for forming such new street, or for building therein, take all such precautions for guarding against injury to the passengers along such street as may be directed by the vestry or district board of the parish or district within which such operations are being carried on; and if any person fail to comply with the directions of such vestry or district board, within such time as may be limited by them, such vestry or district board may do whatever may be necessary for carrying the same into effect, and the expenses thereby incurred shall be repaid to such vestry or district board by the person laying out or opening such new street or building

(*a*) These "charges," though the 225th and 226th sections do not use that expression, may no doubt be recovered under those sections.

therein, as aforesaid, and shall be recoverable by them from such person in manner provided by this Act.

Vestries and district boards to appoint scavengers.

CXXV. It shall be lawful for every vestry and district board and they are hereby required to appoint and employ a sufficient number of persons, or to contract (*b*) with any company or persons, for the sweeping and cleansing of the several streets within their parish or district, and for collecting and removing all dirt, ashes, rubbish, ice, snow, and filth, and for the cleansing out and emptying of privies, and cesspools, sewers and drains, in or under houses and places within their parish or district (*c*); and such company or persons are hereinafter referred to as scavengers; and such scavengers or their servants shall, on such days and at such hours and in such manner as the vestry or district board shall from time to time appoint, sufficiently execute and perform all such works and duties as they respectively are employed or contract to execute or perform; and if any such company or person fail in any respect properly to execute and perform such works and duties, such company or person shall for every such offence forfeit a sum not exceeding 5*l*.

Penalty for obstructing scavengers in perform-

CXXVI. Any occupier of any house or land or other person who refuses or does not permit any soil, dirt, ashes, or filth to be taken away by the scavengers ap-

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(*b*) By sect. 95 of the 25 & 26 Vict. c. 102, *post*, vestries, &c., are empowered to contract for the removal of manure from stables and cowhouses; and by the same Act, s. 89, any persons other than the parties contracting with the vestry, &c., who shall remove dirt, dust, &c., are made liable to penalties.

(*c*) By the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 60, persons are subjected to penalties for emptying privies between the hours of six in the morning and twelve at night, or committing any of the other nuisances there enumerated. The proviso exempts from the operation of the enactment commissioners of sewers and persons in their service, &c., who empty or remove the contents of sewers.

ance of their duty.

pointed by or contracting with any vestry or board as aforesaid, or who obstructs the said scavengers in the performance of their duty, shall for every such offence forfeit and pay a sum not exceeding 5*l.* (*d*).

Refuse collected to be vested in vestry or district board, who may dispose of the same towards defraying their expenses.

CXXVII. All dirt, dust, nightsoil, ashes, and rubbish collected as aforesaid shall be the property of such vestry or board, and such vestry or board shall have full power to sell and dispose of the same for the purposes of this Act as they shall think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the sale thereof shall be applied towards defraying the expenses of the execution of this Act, other than the sewerage expenses.

Owners or occupiers to pay scavengers for removal of refuse of trades.

CXXVIII. In case any scavenger be required by the owner or occupier of any house or land to remove the refuse of any trade, manufacture, or business, or of any building materials, such owner or occupier shall pay to the scavenger a reasonable sum for such removal, such sum, in case of dispute, to be settled by two justices (*e*).

Dispute as to what is refuse of trade, &c. to be determined by justices.

CXXIX. If any dispute or difference of opinion arise between the owner or occupier of any such house or land and the scavengers required to remove such refuse as to what shall be considered as refuse, it shall be lawful for any two justices, upon application made to them by either of the parties in difference, to determine whether the subject matter of dispute is or is not refuse of trade, manufacture, or business, or of any building materials, and in every such case the decision of such justices shall be final and conclusive.

Vestries and district

CXXX. Every vestry and district board shall cause the several streets within their parish or district to be

(*d*) See sect. 27 as to recovery of penalty.
(*e*) See note (*b*) to sect. 225, *post*.

well and sufficiently lighted, and for that purpose shall maintain, or set up and maintain, a sufficient number of lamps in every such street, and shall cause the same to be lighted with gas or otherwise, and to continue lighted at and during such times as such vestry or board may think fit, necessary, or proper; and all public lamps, and the lamp posts and lamp irons and fittings thereof, to be provided by any vestry or district board, shall vest in such vestry or board.

Boards to cause streets to be lighted (*f*).

[CXXXI (*g*). Before any licence for the use of any place within any parish mentioned in either of the schedules (A.) and (B.) to this Act as a slaughter-house is

No slaughter house to be licensed under the

(*f*) The word "street" is, by the 250th sect. defined to mean "any highway (except the carriage-way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, or passage, &c." The language of this section is imperative, and the court will compel the performance of the duty of lighting, where the locality in question is clearly made out to be a street; *R.* v. *Vestry of St. Mary, Islington*, 22 J. P. 383; Ell. Bl. & E. 743; but the vestry have some discretion to decide what is "a street," and where the owner of a road not finished or completely formed though partly built upon, and not yet taken to by the vestry, applied for a *mandamus* to the vestry to light the so-called street, the court refused to interfere, though the houses already built were rated in respect of lighting, but only at half the usual amount; *ibid.* See rule for a *mandamus* to the vestry to light that part of Vauxhall-bridge within their parish; *R.* v. *Vestry of St. Mary, Lambeth*, 25 J. P. 374. The 23 & 24 Vict. c. 125, the Metropolis Gas Act, *post*, Appendix, by the 22nd section requires gas companies, subject to the restrictions expressed, to light all public lamps in the public streets on the requisition of the local authority, which, by the interpretation clauses, includes vestries and district boards. The 165th section of this Act preserves the existing exemptions of land from lighting rates, where the 3 & 4 Will. 4, c. 90, (lighting and watching) were in force at the time of the passing of the Act.

(*g*) This section is repealed by the 92nd sect. of the 25 & 26 Vict. c. 102, *post*, and the 93rd & 94th sections of that Act direct that cowhouses shall also be licensed, and contain the provisions in relation to the licensing both of slaughter-houses and cowhouses.

14 & 15 Vict. c. 61, without notice to vestry or district board.

granted by any quarter sessions of the peace under the provisions of the Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter sixty-one (the Metropolitan Market Act, 1851,) (*h*), one month's previous notice of the intention to apply for such licence shall be given to the vestry or district board of the parish or district in which such place is situate, to the intent that such vestry or district board, if they think fit, may show cause against the grant of such licence.]

Vestries and district boards to appoint medical officers of health.

CXXXII. Every vestry and district board shall from time to time appoint one or more legally qualified medical practitioner or practitioners of skill and experience to inspect and report periodically upon the sanitary condition of their parish or district, to ascertain the existence of diseases, more especially epidemics, increasing the rate of mortality, and to point out the existence of any nuisance or other local causes which are likely to originate and maintain such diseases, and injuriously affect the health of the inhabitants, and to take cognizance of the fact of the existence of any contagious or epidemic diseases, and to point out the most efficacious mode of checking or preventing the spread of such diseases, and also to point out the most efficient modes for the ventilation of churches, chapels, schools, lodging houses, and other public edifices within the parish or district, and to perform any other duties of a like nature which may be required of him or them; and such persons shall be called "medical officers of health;" and it shall be lawful for the vestry or board to pay to every such officer such salary as they think fit, and also to remove any such officer at the pleasure of such vestry or board.

Appointment of

CXXXIII. Every vestry and district board shall no-

(*h*) The 14 & 15 Vict. c. 61, was repealed by 20 & 21 Vict. c. 135, (Loc. & Per.) which, by sect. 35, also provided that before licences were granted for slaughter-houses notice should be given to the vestry or district board.

minate and appoint such number of persons to be inspectors of nuisances in their parish or district as the vestry or board may think fit; and the inspectors of nuisances shall superintend and enforce the due execution of all duties to be performed by the scavengers employed or contracted with under this Act, and report to the vestry or district board the existence of any nuisances; and the vestry or board shall require every such inspector to provide and keep a book in which shall be entered all complaints made by any inhabitant of the parish or district of any infringement of the provisions of this Act, or of any byelaws made thereunder, or of nuisances; and every such inspector shall forthwith inquire into the truth or otherwise of such complaints, and report upon the same to the vestry or board at their next meeting; and such report, and the order of the vestry or board thereon, shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the parish or district; and it shall be the duty of such inspector, subject to the direction of the vestry or board, to make complaints before any justices, and take legal proceedings for the punishment of any person for any offence under this Act or any such byelaws.

Inspectors of nuisances (*i*).

CXXXIV. Every vestry and district board under this Act shall execute, within their respective parish or district, all the duties and powers exerciseable under the Nuisances Removal and Diseases Prevention Act, 1848, and the Nuisances Removal and Diseases Prevention Act, 1849, by any commissioners or other body, or any

Vestries and district boards to be the local authorities to execute the Nuisance Removal Acts (*k*).

(*i*) See as to the appointment of sanitary inspectors under the Nuisances Removal Amendment Act, 23 & 24 Vict. c. 77, s. 9. By the 25 & 26 Vict. c. 102, s. 91, *post*, penalties are imposed for keeping swine in unfit places, or in which the breeding, &c. may create a nuisance or be injurious to health.

(*k*) The Nuisances Removal Act, now in force, is the 18 & 19 Vict. c. 121, as amended by 23 & 24 Vict. c. 77, *post*, Appendix.

...ners having under any Act powers of cleansing, and ...be the local authority to execute any Act passed or ...be passed in the present session, amending or repealing the said Acts or either of them.

Duties and Powers of Metropolitan Board of Works (a).

Main sewers vested in the metropolitan

CXXXV. The sewers mentioned in schedule (D.) to this Act, being the main sewers now vested in the com-

(a) The metropolitan board have additional duties cast upon them by other Acts of parliament. The Metropolitan Buildings Act, 18 & 19 Vict. c. 122, vests in them important functions with regard to the appointment, fees, and returns of district surveyors, and applications respecting the construction of buildings to which the rules of the Act are inapplicable, and other matters. The sections which more especially relate to their powers and duties are the 26th, relative to projections; the 31st, 32nd, 33rd, 34th, 35th, 36th, and 37th, concerning district surveyors; and the 49th, 50th, and 77th, as to fees; the 52nd, 53rd, and 54th, as to returns by those officers; the 55th and following sections down to the 64th inclusive, giving the board certain special powers with relation to the alteration of rules of construction in certain cases, and for other objects; the 65th, 66th, 67th, and 68th, as to the expenses of carrying the Act into execution, and the 114th as to employing or compensating certain officers who had been employed in the office of metropolitan buildings. See the Act itself, and the Amending Acts, the 23 & 24 Vict. c. 52, and the 24 & 25 Vict. c. 87, *post*, Appendix. Certain powers are also conferred upon the board by the 22 & 23 Vict. c. 66, for regulating measures used in sales of gas, the Metropolis Gas Act, 1860, 23 & 24 Vict. c. 125, and the 24 & 25 Vict. c. 79, to amend the Metropolis Gas Act, and more especially by the last-named Act, the powers conferred on justices of the peace by the 22 & 23 Vict. c. 66, as amended by the 23 & 24 Vict. c. 146, are, by sect. 1, so far as relates to the metropolis, transferred to the metropolitan board. The powers so transferred are contained in the 22 & 23 Vict. c. 66, s. 4, relative to providing copies of the models of gas holders, and the appointment of inspectors, and the 22nd section concerning appeals against the acts or decisions of inspectors of meters. See the several Acts relating to this subject in the Appendix, *post*. By the 25 & 26 Vict. c. 66, intituled "An Act for the Safe Keeping of Petroleum," the metropolitan board and the vestries and district boards are (except within the city) the local authority for granting licences for keeping more than the

missioners of sewers of the city of London and in the metropolitan commissioners of sewers respectively (*b*), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall be vested in the metropolitan board of works, and such board shall make (*c*) such sewers and works as they may think necessary for preventing all or any part of the sewage (*d*) within the metropolis from flowing or passing into the river Thames in or near the metropolis, and shall cause such sewers and works to be completed on or before the 31st day of December, 1860 (*e*), and shall also make all such other sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the metropolis, and shall discontinue, close up, or destroy such sewers for the time being vested in them

Board of works and power to such board to make sewers.

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quantities of petroleum prescribed by the Act within a certain distance of dwelling houses and warehouses. And by the 25 & 26 Vict. c. 93, the board are the body appointed by the Act to carry out the Thames embankment. See that and the previous Act to continue the coal and wine duties, the 24 & 25 Vict. c. 42, in the Appendix, *post*.

(*b*) See note (*a*) to sect. 68, *ante*.

(*c*) See 21 & 22 Vict. c. 104, s. 1, *post*, by which the works which the board are required to make are described as "the necessary sewers and works for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the Thames *within* the metropolis." See ss. 24 & 25 of 25 & 26 Vict. c. 102, *post*, as to formation and maintenance of bridges, arches, culverts, &c.

(*d*) See definition of the word "sewage" in the 32nd section of the 21 & 22 Vict. c. 104, for the purification of the Thames and main drainage of the metropolis, *post*.

(*e*) Extended by sect. 26 of 21 & 22 Vict. c. 104, as explained by s. 26 of 25 & 26 Vict. c. 102, to 31st December, 1863.

under this Act, as they may deem unnecessary, and such board shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such board shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road (*g*) or any street (*h*) or place laid out as or intended for a street, as well beyond as within the limits of the metropolis, or through or under any cellar or vault under the carriage-way or pavement of any street and into, through, or under any lands whatsoever (*i*) within or beyond the said limits, making compensation (*k*) for any damage

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(*g*) See sect. 33 of 25 & 26 Vict. c. 102, *post*, providing for notice before breaking up turnpike roads and imposing other conditions.

(*h*) See interpretation of word "street," sect. 250, *post*. See express power to metropolitan board to stop up streets, roads, or ways, during execution of works, 25 & 26 Vict. c. 102, s. 21, *post*.

(*i*) The powers conferred by this section do not authorize the metropolitan board of works to construct any works on the soil or bed of the Thames. That power is however given by the 21 & 22 Vict. c. 104 (Main Drainage Act), sect. 2, *post*, but subject to the condition that the approval of the admiralty should have been previously obtained as required by sect. 27 of the same Act. Where therefore the metropolitan board had executed works for carrying a sewer into the river, by which the plaintiff's ship was damaged, and the approval of the admiralty had not been obtained, the board were held liable to an action for obstructing the navigation of the river; *Brownlow* v. *The Metropolitan Board of Works and another*, 31 L. J. (N. S.) C. P. 140. See ss. 24 & 25 of 25 & 26 Vict. c. 102, *post*, as to communications between lands through which works are carried; the provisions contained in ss. 34 & 35 of 25 & 26 Vict. c. 102, *post*, as to notices and other requirements where works will affect any railway or canal; ss. 27 & 28 of the 21 & 22 Vict. c. 104, *post*, requiring approval of works under that Act by the admiralty and conservators of the Thames; and sect. 30, regulating works under or over the river Lea.

(*k*) Under this provision boards and vestries are empowered to carry their sewers through any lands, &c. whatsoever, on the sole condition of making compensation, and they are not com-

done thereby as hereinafter provided (*l*), and all sewers and works from time to time made by the said board, shall

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pelled to purchase the land itself, or any easement in it, and the provisions of the 150th, 151st, and 152nd sections, enabling them to purchase land or rights or easements in land which they may deem necessary for the formation or protection of works, do not restrict the exercise of this power; *North London Railway Company* v. *Metropolitan Board of Works*, 28 L. J. (N. S.) Ch. 909; *Hughes* v. *Metropolitan Board of Works*, 25 J. P. 675, Ch.; and see *Stainton* v. *Woolrych*, and *Stainton* v. *Metropolitan Board of Works, and Lewisham District Board*, 26 L. J. (N. S.) Ch. 300. In the construction of powers conferred by Acts of parliament upon public bodies, the intention of the legislature is not to be measured by the more guarded powers given to public companies established for trading purposes; *North London Railway Company* v. *Metropolitan Board of Works, ubi supra.* The sole condition to the exercise of the power of the board therefore is to make compensation. The payment or tender of compensation is not a condition precedent to the right of entry on lands to execute works; *Peters* v. *Clarson*, 7 M. & G. 548; *Lister* v. *Lobley*, 7 Ad. & E. 124; *North London Railway Company* v. *Metropolitan Board of Works, supra.* Though the language of this part of the section giving compensation is somewhat different from that used in the 68th section of the Lands Clauses Act, 8 Vict. c. 18, it seems to be similar in effect, and it is probable that the same species of damage or injury would be considered the subject of compensation under both Acts. The compensation mentioned in the 68th section of the Lands Clauses Act, is "in respect of any lands or of any interest therein which shall have been taken for or injuriously affected by the execution of the works," and the 6th section of the Railway Clauses Act directs full compensation for the value of the lands, &c. "and for all damage sustained by owners, &c." by reason of the exercise as regards such lands of the powers vested in the company. The last-mentioned Act is however not incorporated with the Metropolis Local Management Act. The decisions under the 68th section of the Lands Clauses Act, and other statutes containing compensation clauses, show that compensation can only be claimed for acts authorized by the statute; *Broadbent* v. *Imperial Gas Company*, 26 L. J. (N. S.) Ch. 276; *In re Penny*, 26 L. J. (N. S.), Q. B. 225; and it can only be claimed where the act occasioning the injury would, without the statute authorizing it, have been the subject of an action at common law. If the land is not taken, and nothing is done which would have afforded a cause of action before the Act passed, then, although it may produce a dete-

vest in them; and the said board shall cause the sewers vested in them to be constructed, covered, and kept so

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rioration of the property, it does not *injuriously affect* the land or constitute a ground for compensation; *In re Penny, supra; Caledonian Railway Company* v. *Ogilvy*, 2 Macq. H. L. Rep. 229; *Broadbent* v. *Imperial Gas Company*, 26 L. J. (N. S.) Ch. 276; *Chamberlain* v. *West End of London and Crystal Palace Railway Company*, 31 L. J. (N. S.) Q. B. 201; *Glover* v. *North Stafford Railway Company*, 20 L. J. (N. S.) Q. B. 376, and the authorities cited. *The King* v. *The London Dock Company*, 5 A. & E. 163, is overruled by the *Queen* v. *The Eastern Counties Railway Company*, 2 Q. B. 347; *Chamberlain* v. *West End, &c., and Crystal Palace Railway Company, supra.* In the *Caledonian Railway Company* v. *Ogilvy, supra*, Lord Cranworth even guards himself against admitting that the claimant would have a right of compensation in some cases in which, if the Act had not passed, there might have been not only an indictment but also a right of action. In *Stainton* v. *Woolrych, and Stainton* v. *Metropolitan Board and Lewisham District Board, supra*, where the defendants had cut a sewer in a high road, contiguous to the plaintiff's land, and thereby withdrawn the water of an ancient spring, and laid dry a rivulet and series of ponds, the Master of the Rolls refused an injunction, holding that the plaintiff's only remedy was to claim compensation. The right suggested in the judgment in that case arose upon the proviso to the 50th section of the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, giving compensation in the case of works prejudicially affecting any ancient mill or water rights, but it is observable that though the 86th section of the present Act, the Metropolis Local Management Act, describes in identical terms the works and subject matters of compensation mentioned in the 50th section of the Metropolitan Sewers Act, it is limited to the operations of vestries and district boards, and does not apply to those of the metropolitan board. Trying the injury sustained in the case last cited by the test furnished by the decisions above referred to, namely, whether or not it would be actionable without the statutes conferring the special powers occasioning the mischief, it is extremely doubtful whether the opinion given in the judgment that the plaintiff could claim compensation can be supported. See *Chasemore* v. *Richards*, 29 L. J. (N. S.) Ex. 81, where it was held that no action would lie for damage of this description. There the owner of an ancient mill on a river sought to recover against the owner of land adjacent, who had dug a well on his own land, and thereby diverted the underground waters

as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same, they

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not known to flow in a defined channel, which otherwise would have percolated into the river, and it was held that the action could not be maintained. Water which diffuses itself over an indefinite surface is not the subject matter of a right by user. *Briscoe* v. *Drought*, 11 Ir. Com. Law R. 250, in error. For acts which, notwithstanding the statute containing or incorporating the compensation clause, remain wrongful, the remedy by action is not taken away; *Broadbent* v. *Imperial Gas Company*, and the other cases cited, *supra*. The rules governing the liabilities of public bodies to actions in the construction of works, &c., may be collected from the decisions referred to below. A private individual can in general bring no action for a public nuisance; but if he has sustained damages thereby beyond the rest of the public he may maintain an action for the damage; *Rose* v. *Groves*, 5 M. & G. 613; *Simmons* v. *Lillystone*, 8 Ex. 431; and see *Chamberlain* v. *West End of London and Crystal Palace Railway Company*, 31 L. J. (N. S.) Q. B. 201. Corporate bodies, trustees, commissioners, &c., charged with the execution of public works for the benefit of the public, performing their duties gratuitously, not for profit, and not exceeding their authority, are not liable in damages for injuries resulting from the negligence or unskilfulness of their contractors or workmen; *Hall* v. *Smith*, 2 Bing. 156; *Sutton* v. *Clarke*, 6 Taunt. 29; *Boulton* v. *Crowther*, 2 B. & C. 703; *Harris* v. *Butler*, 4 M. & S. 57; *Duncan* v. *Findlater*, 6 Cl. & Fin. 894; *Steel* v. *South Eastern Railway Company*, 16 C. B. 550. In *Holliday* v. *The Vestry of St. Leonard, Shoreditch*, 30 L. J. (N. S.) C. P. 361, it was held that a vestry acting under the provisions of the present statute were not responsible for an injury arising from the negligence of workmen employed by their surveyor in paving one of the streets of their parish. But if such bodies or persons derive a profit from carrying on their works, their exemption from liability ceases; *Scott* v. *Mayor of Manchester*, 28 L. J. (N. S.) Ex. 406; *Parnaby* v. *Lancaster Canal Company*, 11 A. & E. 230. And it makes no difference whether the rates, tolls, or other profits received by them are applicable to *beneficial* or *fiduciary* purposes; *Gibbs* v. *Liverpool Dock Company*, 27 L. J. (N. S.) Ex. 321; *Penhallow* v. *Mersey Dock and Harbour Board*, 30 L. J. (N. S.) Ex. 329; and see *Metcalfe* v. *Hetherington*, 11 Ex. 257; 24 L. J. (N. S.) Ex. 314; and observation of *Crompton*, J., on that case, in *Penhallow* v. *Mersey Dock and Harbour*

may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may

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Board, ubi supra. But if the trustees, &c., are personally cognizant of and parties to a wrongful act, or the damage arises from the nature of the works themselves, they are liable; *Whitehouse* v. *Fellowes*, 30 L. J. (N. S.) C. P. 105. *The Proprietors of Itchin Bridge* v. *The Local Board of Health of Southampton*, 27 L. J. (N. S.) Q. B. 128; *Scott* v. *Corporation of Manchester*, 1 H. & N. 59; *Ruck* v. *Williams*, 27 L. J. (N. S.) Ex. 357. As where the proceeding for want of compliance with a formality prescribed by an Act of parliament becomes an unlawful one; *Brownlow* v. *Metropolitan Board of Works*, 31 L. J. (N. S.) C. P. 140 (see note (i), p. 94, *ante*), and not the less so because the contractor may also be responsible for his own acts or defaults. *Ibid.* But a public body using ordinary caution is not responsible for damage arising from extraordinary causes; *Blyth* v. *Birmingham Water Company*, 11 Ex. 781. Or for damage arising from the negligence of the plaintiff or of strangers; *Holden* v. *Liverpool Gas Company*, 3 C. B. 1. See as to responsibility of a contractor to commissioners of sewers for an injury resulting from the neglect to fence a trench, where access to a mews was obstructed by the works. *Clayards* v. *Dethick*, 12 Q. B. 439; and *Jones* v. *Bird*, 5 B. & Ald. 837, 844, as to the sufficiency of notice to secure property on the execution of sewerage works and the liability to shore up houses. In *Ward* v. *Lee*, 26 L. J. (N. S.) Q. B. 142, it was decided that the contractors of the metropolitan commissioners of sewers, who had broken into an old drain and damaged the property of the plaintiff, but who were found by the jury to have acted *bonâ fide* in carrying out the orders of the commissioners, were, by sect. 28 of the 11 & 12 Vict. c. 112 (the Metropolitan Sewers Act now expired), absolved from personal liability; but that the commissioners were liable for such an injury, and the damages that might be recovered against them would be payable out of the funds at their disposal under sect. 125 of the statute. But there is no such clause in the present statute. It may here be remarked that as between the board and contractor a properly framed contract for the construction of sewers should contain a stipulation requiring the contractor, at his own expense, to connect with the sewers in course of construction all sewers, gullies, house drains, &c., that are interfered with in the course of the works. See, as to the relative liabilities of town commissioners and waterworks company under a local Act, where an injury had resulted from a defective fireplug, *Bayley* v. *Wolverhampton Waterworks Company*, 30 L. J. (N. S.) Ex. 57; and see the

be necessary, and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit, but so as not to create a nuisance (*a*), and the money arising thereby shall be applied towards defraying the expenses of such board (*b*).

Before works for intercepting the sewage are commenced, plans, &c., to be submitted to commissioners of works.

[CXXXVI (*c*). Before the metropolitan board of works commence any sewers and works for preventing the sewage from passing into the Thames as aforesaid, the plan of the intended sewers and works for the purpose aforesaid, together with an estimate of the cost of carrying the same into execution, shall be submitted by such board to the commissioners of Her Majesty's works and public buildings; and no such plan shall be carried into effect until the same has been approved by such commissioners.]

Metropolitan board may declare sewers to be

CXXXVII. In case it appear to the metropolitan board of works that any sewers in the metropolis not hereinbefore vested in such board ought to be considered

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instance of an action against a district board of works constituted under this Act for neglecting to keep a sewer clean, whereby plaintiff's premises were flooded, *Meek* v. *Whitechapel Board of Works*, 2 F. & F. 144.

(*l*) See sect. 225 as to settlement and recovery of compensation.

(*a*) See 21 & 22 Vict. c. 104, s. 23, *post*, as to works and means for deodorizing sewage during the execution of works for the purification of the Thames. See sect. 24 as to execution of works so as not to create a nuisance, and sect. 31 as to proceedings by secretary of state on complaint of nuisance.

(*b*) See powers given to metropolitan board to take land for works for deodorization of sewage, 21 & 22 Vict. c. 104, s. 3, *post*.

(*c*) This clause is repealed by the 21 & 22 Vict. c. 104, *post*, the first section of which directs the board to execute the works of main drainage "according to such plan as to them shall seem proper." The approval of the commissioners of works is no longer necessary; see sect. 25 of last-named Act; and by the 9th section the lords commissioners of the treasury are authorized to appoint inspecting engineers to inspect the main drainage works executed under this Act, and report to the commissioners in relation to the expenditure on such works.

main sewers, and take under their jurisdiction sewerage matters under jurisdiction of vestries and district boards.

main sewers, and to be under their management, it shall be lawful for such board, by an order under their seal, to declare the same to be main sewers, and thereupon the same shall vest in and be under the management of the said board; and it shall also be lawful for the said board by any such order to take under their jurisdiction and authority any other matters in relation to sewerage and to drainage with respect to which jurisdiction or authority is by this Act vested in any vestry or district board.

Metropolitan board to make orders for controlling vestries and district boards in construction of sewers, &c. (*d*)

CXXXVIII. The metropolitan board of works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, make such general or special order as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, and maintenance and cleansing of sewers in their respective parishes or districts, and for securing the proper connexion and intercommunication of the sewers of the several parishes and districts and their communications with the main sewers vested in the said metropolitan board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage; and all such orders shall be binding upon such vestries and boards.

Metropolitan board may direct appointments

CXXXIX. The metropolitan board of works, where it appears to them expedient that any officer or set of officers necessary for any of the purposes of this Act

(*d*) The 83rd section of the 25 & 26 Vict. c. 102, *post*, empowers the metropolitan board to make byelaws in relation to the matters enumerated in this section; and see sect. 45, *et seq.* of same Act, as to submitting plans to metropolitan board and other regulations in case of the construction of new sewers, branching of drains into sewers, abandonment, &c. of designs for sewers; and sect. 32 of 25 & 26 Vict. c. 102, *post*, as to compensation where sewers of different parishes are connected.

should act for a larger area than is comprised in one parish or district, or for parts of different parishes or districts, may, with the consent of the vestries or boards of such parishes or districts, direct that such vestries or boards shall unite in the appointment and removal of such officer or set of officers; and the said metropolitan board shall in such case direct the mode in which the respective bodies or committees thereof shall act together for the purposes of every such appointment and removal, and the proportions in which the salary or salaries of such officer or officers shall be borne and paid by every such parish and district respectively.

to be made for two parishes or districts jointly.

CXL. It shall be lawful for the metropolitan board of works, where it appears to them that any street or line of street, being in more than one parish or district, should be placed under the exclusive management of one vestry or district board for the purposes of paving, lighting, watering, and cleansing, or any of them, or for the purposes of sewerage and drainage, or for all the purposes of this Act, to order that the same shall be under the management of such vestry or board accordingly; and it shall also be lawful for the said metropolitan board, where it appears to them that any part of any parish or district is so detached or situate that it would be convenient for the purposes of sewerage or drainage that the same should be placed under the management of the vestry or district board of any adjoining parish or district, to order that such part shall, for such purposes, be under the management of such vestry or district board.

Or may place a street in different parishes under the management of one vestry, or part of a parish under the management of vestry of adjoining parish (*e*).

(*e*) See sect. 160, as to orders by vestries for payment of expenses of executing the Act in the parts placed under their management under this provision. The 25 & 26 Vict. c. 102, *post*, empowers the metropolitan board to place roadways, footways, &c., in different parishes or districts under the management of one vestry or district board, and to direct in what proportions the cost of constructing sewers, paving, lighting, &c., shall be borne.

Metropolitan board to regulate naming of street and numbering of houses.

[CXLI. (*f*) It shall be lawful for the metropolitan board of works from time to time to cause to be painted or affixed on a conspicuous part of some house or building at or near each end, corner, or entrance of every street in the metropolis the name of such street, and the board may, where more than one street in the metropolis is called by the same name, alter the name of any or all such streets, except one, to any other name which to such board may seem fit, and which may be approved by the commissioners of Her Majesty's works and public buildings; and before any name is given to any new street, notice of the intended name shall be given to the said board, and if there be any street in the metropolis called or about to be called by the same name, the said board may, by notice in writing, stating that there is already a street in the metropolis called or about to be called by the same name, and describing the locality thereof, given to the person by whom notice of such intended name was given to them, at any time within fourteen days after receipt of such last-mentioned notice, object to such intended name; and it shall not be law-

(*f*) This section is repealed by sect. 87 of the Act, 25 & 26 Vict. c. 102, *post*, which re-enacts its provisions with certain modifications. Under this enactment it was held that the metropolitan board possessed the exclusive power of directing how houses should be numbered within the city of London; and the powers given to the commissioners of sewers for the city by the 11 & 12 Vict. c. 163, were in that respect superseded by those more recently conferred upon the metropolitan board; *Daw* v. *The Metropolitan Board of Works*, 31 L. J. (N. S.) C. P. 223.—"If the powers conferred upon the commissioners of sewers for the city of London by their local Act conflict with the powers conferred upon the metropolitan board of works by the 18 & 19 Vict. c. 120, and the metropolitan board choose to exercise their powers, they have a right to do so, and the powers of the commissioners of sewers for the city of London are so far at least suspended." *Per Erle*, C. J. *ibid*, p. 225. By the 74th section of the 25 & 26 Vict. c. 102, *post*, buildings projecting beyond the general line when taken down to an extent exceeding one-half may be set back. See sect. 85 of 25 & 26 Vict. c. 102, *post*, regulating the height of buildings in certain situations.

ful to set up any name to any new street in the metropolis until the expiration of fourteen days after notice thereof has been given as aforesaid to the said board, or to set up any name objected to as aforesaid; and the owners or occupiers of houses and buildings in the several streets in the metropolis shall mark such houses or buildings with such numbers or names, for the purpose of distinguishing the same, as the said board may direct or approve, and shall renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any occupier of any such house or building neglect for one week after notice from the said board to mark such house or building with such number or name as the said board may direct or approve, or to renew the number or name thereof as aforesaid, he shall be liable to a penalty of not exceeding 40*s.*, and the said board may cause such number or name to be so marked or renewed, and recover the expense thereof from the owner of such house or building in manner hereinafter provided; and if any person wilfully or maliciously destroy, pull down, obliterate, or deface the name of any street in the metropolis, or the name or number of any house or building in any such street, or paint, affix, or set up any name to any street, or any name or number to any house or building, contrary to this enactment, he shall for every such offence forfeit a sum not exceeding 40*s.*; and it shall be lawful for the said board to cause such name or number so painted, affixed, or set up contrary to their directions to be obliterated or destroyed.]

CXLII. The said metropolitan board shall keep a register of all alterations made by them in the names of streets, and such registers shall be kept in such form as to show the date of every such alteration, and the name of the street previous to such alteration as well as the new name thereof. Register to be kept of alterations in names of streets.

[CXLIII. (*g*) No building shall, without the con- Buildings not to be

(*g*) This section is repealed by the 25 & 26 Vict. c. 102, s. 75,

brought beyond line of street.

sent in writing of the metropolitan board of works, be erected beyond the regular line of buildings in the street in which the same is situate, in case the distance of such line of buildings from the highway do not exceed thirty feet, or within thirty feet of the highway where the distance of the line of buildings therefrom amounts to or exceeds thirty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway; and in case any building be erected contrary to this enactment, it shall be lawful for the vestry or district board in whose parish or district such building is situate to cause the same to be demolished or set back (as the case may require), and to recover the expenses incurred by them from the owner of the premises in manner provided by this Act.]

Power to metropolitan board to make improvements (*a*).

CXLIV. The metropolitan board of works shall have power to make, widen, or improve any streets, roads, or ways, for facilitating the passage and traffic between different parts of the metropolis, or to contribute and

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post, which contains a new set of regulations with respect to buildings beyond the *general* line, and see s. 76 of same Act. Neither this nor the Metropolitan Building Act, 18 & 19 Vict. c. 122, contains any definition of the word "building," but under the latter Act it was held that a shop all wood, without footings or any brickwork for a foundation, thirteen feet high and as many wide, built on wooden joists laid on the ground without being let or fastened into the soil, and being capable of being removed in its entirety, was a *building* within the meaning of that Act; *Stevens* v. *Gourley*, 29 L. J. (N. S.) C. P. 1. It was decided under this provision, and the 3rd section of 19 & 20 Vict. c. 112, that the ecclesiastical commissioners were not empowered to erect a church beyond the regular line of buildings in a street; *Ecclesiastical Commissioners* v. *Vestry of Clerkenwell*, 30 L. J. (N. S.) 454, Ch. *on appeal*. Under this enactment it was decided that it was sufficient if there were a general uniformity in the line of buildings; *Tear* v. *Freebody*, 22 J. P. 707. *Robins* v. *Bury*, 25 J. P. 83, C. B. The removal of the materials in the former case was held to be a conversion. But see now the 25 & 26 Vict. c. 102, s. 75, *post*.

(*a*) By the 19 & 20 Vict. c. 112, s. 10, the power of making application to parliament given to the metropolitan board by

join with any persons in any such improvements as aforesaid, and to take, by agreement or by gift, any land, rights in land, or property, for the purposes aforesaid (or otherwise) for the improvement of the metropolis, on such terms and conditions as they may think fit; and such board, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, may make applications to parliament (*b*) for that purpose, and the expenses (*c*) of such application may be defrayed as other expenses of the said board: [Provided always, that before the

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this section is declared to apply to applications to parliament for the purpose of parks, pleasure grounds, places of recreation, &c. See the 19 & 20 Vict. c. 112, s. 11, *post*, empowering vestries to take land by agreement or gift for pleasure grounds, &c.; and sect. 72 of 25 & 26 Vict. c. 102, *post*, empowering vestries and district boards, with consent of metropolitan board, to effect improvements within their parish or district, and to borrow money for that purpose, and sect. 73, giving the same bodies powers under the 57 Geo. 3, c. 29, for improving and regulating streets. See clauses, *post*, Appendix, and see note (*d*) to sect. 152.

(*b*) The Acts of parliament which have been obtained by the metropolitan board under the power given by this enactment are the 20 & 21 Vict. c. 115, for opening new streets in the city and liberties of Westminster and borough of Southwark; the 20 & 21 Vict. c. 150, for the formation of a park for the northern suburbs of the metropolis, to be called Finsbury Park; and 21 Vict. c. 38, for the promotion of an improved communication between Limehouse and the Victoria Park, in the county of Middlesex, and for other purposes.

(*c*) Where a waterworks company was empowered by a statute to supply water to a district, it was decided that it was competent to them to apply to parliament for an extension of their powers. *Bateman* v. *Mayor of Ashton under Lyne*, 3 H. & N. 323.

As to the costs of application to parliament by local bodies, see *Attorney-General* v. *Andrews, Commissioner of Southampton*, 14 Jur. 905. Commissioners of sewers were held entitled to levy a rate for costs *bonâ fide*, and prudently incurred in opposing a bill likely to injure a level, this being a litigation arising out of their duties within the meaning of the 16th section of 3 & 4 Will. 4, c. 22; and a local board are entitled to

metropolitan board of works commence any such works the estimated expense whereof shall exceed fifty thousand pounds, the plan of such works, together with an estimate of the cost of carrying the same into execution, shall be submitted by such board to the commissioners of Her Majesty's works and public buildings; and no such plan shall be carried into effect until the same has been approved by such commissioners; and no such works shall be commenced in cases where the estimated expense thereof shall exceed the sum of one hundred thousand pounds without the previous sanction of parliament] (*d*).

Determination of Metropolitan Commission of Sewers.

Powers of metropolitan commissioners of sewers to cease (*e*).

CXLV. From and after the commencement of this Act all duties, powers, and authorities vested in the metropolitan commissioners of sewers shall cease to be so vested; and in the meantime, and until such commence-

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oppose proceedings instituted against them on account of works which they had executed; *R.* v. *Marris*, on pros. *Worksop Local Board of Health*, 21 J. P. 580.

But a local board are not entitled at the expense of the ratepayers to oppose a local bill promoted by a gaslight company to obtain extended powers. See further, *R.* v. *Worksop Local Board of Health*, 21 J. P. 451; *Bright* v. *North*, 2 Ph. 216; *Attorney-General* v. *Wigan*, 23 L. J. (N. S.) Ch. 429; *Attorney-General* v. *Eastlake*, 17 Jur. 801; *East Anglian Railway Company* v. *Eastern Counties Railway Company*, 11 C. B. 775; and observations of Lord Campbell, C. J. in *R.* v. *Marris*, 21 J. P. 580, as to opposition to private bills out of the rates, and as to the propriety of first obtaining the assent of the ratepayers, *R.* v. *Marris*, *ubi supra*.

(*d*) This proviso is repealed by the 21 & 22 Vict. c. 104, s. 25, *post*, and the approval of the commissioners of works and previous sanction of parliament in the cases specified are no longer necessary.

(*e*) The Acts relating to the metropolitan commissioners of sewers are the Metropolitan Sewers Act, 1848, the 11 & 12 Vict. c. 112, and the continuing and amending Acts, the 12 & 13 Vict. c. 93, 14 & 15 Vict. c. 75, 15 & 16 Vict. c. 64, 16 & 17 Vict. c. 125, 17 & 18 Vict. c. 111. An Act was also passed in

ment, the metropolitan commission of sewers, and the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, and the Acts amending the same, shall continue in force.

1855, 18 Vict. c. 30, giving certain special powers in relation to expenditure on house drainage. All have now expired. The first of the above-named Acts incorporated the 23 Hen. 8, c. 5, with certain exceptions, but none of those provisions are incorporated with the present Act, but the powers of the board and vestries constituted by it are contained in substantive enactments. The 182nd section, however, preserves to the metropolitan board the powers conferred by the first of the above Acts in relation to improvement rates. The limits of the metropolitan sewers commission very materially differed from those of the metropolis, as defined by the present Act. See, as to the latter, interpretation of the word "metropolis," sect. 225. The metropolitan commission of sewers, which was issued under the power contained in the 1st section of the 11 & 12 Vict. c. 112, included the limits of the commissions commonly known as those of Westminster and part of Middlesex, the Holborn and Finsbury, the Poplar and Blackwall, the Tower Hamlets, Saint Katherine's, the Surrey and Kent, and the Greenwich. The first metropolitan commission, issued in January, 1849, included within it, under a provision contained in the 1st section of the 11 & 12 Vict. c. 112, the parts subject to the jurisdiction of the commissioners acting under 5 Geo. 4, c. 100, the Regent's Park, Regent Street, &c., issued in October, 1849, and the second added to its other districts the parish of Chiswick. The limits were thus described in that and subsequent commissions:—"Within the limits of the city and liberties of Westminster and the borough of Southwark, or in the borders or confines of the same; within the limits of the parishes of Hampton, Teddington, Twickenham, Isleworth, Hanwell, Brentford, Acton, Ealing, Hammersmith, Fulham, Kensington, and Chelsea, in the county of Middlesex, and to and within the city and liberty of Westminster, and precincts of the same, and to Temple-bar, within the said county, and from thence to and within the parish of St. Giles in the Fields and Saint George, Bloomsbury, Saint Pancras, Saint Marylebone, Hampstead, Willesden, and Paddington, and so to the river Thames in the county aforesaid, or in the borders or confines of the same; within the limits of the Holborn and Finsbury divisions, the parish of Saint Leonard, Shoreditch, and the liberty of Norton Falgate, in the county of Middlesex, or in the borders or confines of the same; within the limits of and

Actions, &c. not to abate, but to continue for or against metropolitan board of works.

CXLVI. No action, suit, prosecution, or other proceeding whatsoever, commenced or carried on by or against the said commissioners, shall abate or be discontinued or prejudicially affected by the determination of the powers of such commissioners, but shall continue and take effect in favour of or against the metropolitan board of works in the same manner in all respects as the same would have continued and taken effect in relation to the said commissioners if this Act had not been passed, and the powers of the said commissioners had continued in full force; and all decrees and orders made, and all fines, amerciaments, and penalties imposed and incurred, respectively, previously to the commencement of this Act,

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between Limehouse and Blackwall, in the several parishes of All Saints, Poplar, and Saint Anne, in the county of Middlesex, called Poplar Marsh, otherwise Stebunheath Marsh, in the said county, siding to the river of Thames, opposite to Deptford, Greenwich, and Marshes in the county of Kent, or in the borders or confines of the same; within the limits of the Tower Hamlets (excluding Saint Katherine's and Blackwall Marsh), in the county of Middlesex, or in the borders or confines of the same; within the limits of the precincts of Saint Katherine (exclusive of the Tower Hamlets and the liberties thereof), in the county of Middlesex, or in the borders or confines of the same; within the limits of the district extending from East Mouldsey, in the county of Surrey, to the river Ravensbourne, in the county of Kent, or in the borders or confines of the same; within the limits extending from the head of the river Ravensbourne to Lombard's Wall, in the said county of Kent, or in the borders or confines of the same; within the parts subject to the jurisdiction of the commissioners, acting in execution of an Act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, together with the new street, from the Regent's Park to Pall Mall, and the new streets and improvements in the neighbourhood of Parliament-street and Privy-gardens, and for maintaining a convenient sewage for the same,' or in the borders or confines of the same; and also within the limits of the parish of Chiswick in the county of Middlesex, such parish and every part thereof being not more than twelve miles distant in a straight line from Saint Paul's Cathedral in the city of London."

The commissioners did not deal with the whole of the area comprised within the foregoing limits, but confined the exercise of their power to what was designated their "active ju-

shall and may be enforced, levied, recovered, and proceeded for, and all administrative proceedings commenced previously to the commencement of this Act shall and may be continued, proceeded with, and completed, the metropolitan board of works being, in reference to the matters aforesaid, in all respects substituted in the place of the said commissioners.

Rates made by metropolitan commissioners of sewers to be recoverable under this Act (*f*).

CXLVII. All rates made by the said commissioners previously to the commencement of this Act, or so much thereof as may not have been levied and paid, shall be levied by and paid to the metropolitan board of works, and such board shall have the same rights and remedies in all respects in relation thereto as would have been had and might have been exercised by the said commissioners; but all such rates respectively shall, so far as circumstances admit, be applied to the same purposes as the same would have been applicable to in case the powers of the said commissioners had continued in force, and shall for the purposes of such application (where the circumstances so require) be paid over by the metropolitan board of works, or by their order, to the vestry or district board having the management of the sewers in any parish or district under this Act, or as such vestry or board may direct.

Property vested in metropolitan commissioners of sewers (except sewers transferred to vestries and district boards) transferred

CXLVIII. All property, matters, and things whatsoever vested in the metropolitan commissioners of sewers, except such sewers as are hereby vested in any vestry or district board, and except such sewers as are not within the limits of the parishes and places mentioned in the schedules to this Act, shall be vested in the metropolitan board of works; and all persons who then owe any money to the said commissioners of sewers, or to

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risdiction," which was divided into districts and levels, in conformity with the 34th and 35th sections of the Act of 1848.

(*f*) See action brought by the metropolitan board to recover arrears of rates due to the metropolitan commissioners of sewers, *Metropolitan Board of Works* v. *Vauxhall Bridge Company*, 26 L. J. (N. S.) Q. B. 253, and observations in note (*h*) to sect. 161..

to the metropolitan board of works.

any person on behalf of such commissioners, shall pay the same to the metropolitan board of works, or as they may direct; and all monies then due and owing by or recoverable from the said commissioners shall be paid by or recoverable from the metropolitan board of works; and all contracts, agreements, bonds, covenants, and securities (*f*) theretofore made or entered into with or in favour of or by the said commissioners, and all contracts, agreements, bonds, covenants, and securities made or entered with or in favour of or by any former or other commissioners, which under the said Act of the eleventh and twelfth years of Her Majesty were to take effect in favour of, against, and with reference to the said metropolitan commissioners of sewers, and are now in force, shall take effect and may be proceeded on and enforced, as near as circumstances admit, in favour of, by, against, and with reference to the metropolitan board of works, as the same would have taken effect and might have been proceeded on and enforced in favour of, by, against, and with reference to the said metropolitan commissioners of sewers if this Act had not been passed, and the powers of such commissioners had continued in full force; and any retiring pension or allowance granted under section twenty-seven of the said Act of the eleventh and twelfth years of Her Majesty shall continue payable on the like terms by the said metropolitan board of works (*g*).

Auxiliary Powers common to the Metropolitan Board of Works and to Vestries and District Boards.

Power to boards and

CXLIX. The metropolitan board of works, and every

(*f*) See special provision for payment of mortgages, &c. of metropolitan board, sect. 181, *post*.

(*g*) The provision referred to authorized the commissioners to order the payment of the pension or allowance on such terms and out of such funds under their disposal as they thought fit. See 213th section of the present Act, as to retiring pensions to officers of metropolitan commissioners not continued in office by metropolitan board, &c.

district board and vestry, may enter into all such contracts as they may think necessary for carrying this Act into execution; and every such contract for works (*h*)

vestries to enter into contracts for carrying

(*h*) Under the 85th section of the 11 & 12 Vict. c. 63, (Public Health Act,) in which the language is very similar to that used in the present provision, it was decided that the section was not merely directory but created a condition, and that a contract by a non-corporate district not under seal was void; *Frend* v. *Dennett*, 27 L. J. (N. S.) C. P. 314; 4 Jur. (N. S.) 897; and the local board were held to have no power to contract so as to bind the rates unless they contracted in the manner described. The general rule is that all contracts by a corporation must be under their common seal, subject to certain exceptions in the case of contracts of a comparatively unimportant character, such as hiring a cook or appointing a bailiff. Further exceptions to the rule have been introduced in the case of contracts by trading corporations for carrying on their trade, for works or services incidental and necessary to the purposes of the corporation, contracts which from their nature cannot be under seal, contracts of urgency, &c. It is however difficult to apply those rules with certainty, nor is it quite practicable to reconcile the decisions of the courts upon the subject. Most of the authorities were reviewed in the following cases:—*Paine* v. *Strand Union*, 8 Q. B. 326; *Homersham* v. *Wolverhampton Waterworks Company*, 6 Ex. 137; *Kirk* v. *Bromley Union*, 12 Jur. 85; *Lamprell* v. *Guardians of Billericay*, 18 L. J. (N. S.) Ex. 282. Those authorities show that by the absence of a seal a contract is invalidated. See also *Ernest* v. *Nicholls*, 6 H. L. Ca. 40. In the following cases the contracts were held binding notwithstanding they were not under seal; *Sanders* v. *Guardians of St. Neot's Union*, 8 Q. B. 810; *Clarke* v. *Guardians of Cuckfield Union*, 21 L. J. (N. S.) Q. B. 349; *Haigh* v. *Guardians of North Brierley Union*, 28 L. J. (N. S.) Q. B. 62; and see *Cox* v. *Midland Counties Railway Company*, 3 Ex. 270. In contracts by boards and vestries the seal must probably still be proved by the evidence of a witness who knows it, notwithstanding the 8 & 9 Vict. c. 113, s. 1, dispenses with such proof in certain cases. As to penalties for non-completion of contract within the stipulated time, see *Duckworth* v. *Alison*, 1 M. & W. 412; *Holme* v. *Guppy*, 3 M. &. W. 387; *M'Intosh* v. *Midland Counties Railway*, 14 M. &. W. 548; and see *Thornhill* v. *Neats*, 2 L. T. (N. S.) 539, C. P. See a suit by a party to whom the contractor had assigned his contract, and who completed the works, *Aspinall* v. *London and North Western Railway*

Act into execution.

or materials whereof the value or amount exceeds 10*l.* shall be in writing or print, or partly in writing and partly in print, sealed with the seal of the board or vestry; and every contract so entered into, and duly executed by the other parties thereto, shall be binding on the board or vestry and their successors, and upon all other parties thereto: Provided always, that it shall be lawful for any such board or vestry to compound with

Power to compound for penalties

Company, 11 Hare, 325; and see case where works finished by the administrator of the contractor after his death; *Crosthwaite* v. *Gardner*, 21 L. J. (N. S.) Q. B. 356. Where a contract empowered a company after notice to take possession of the plant, and they acted on the notice, no relief could be obtained in equity; *Ranger* v. *The Great Western Railway Company*, 5 H. L. Ca. 72; and as to the form of such a notice, see *Pauling* v. *Mayor of Dover*, 24 L. J. (N. S.) Ex. 128. See as to effect of bankruptcy of contractor on right of employer to take possession of the plant, *Rouch* v. *Great Western Railway Company*, 4 P. & D. 686; *Hawthorn* v. *Newcastle Railway Company*, 3 Q. B. 734, n. See *Dimes* v. *Grand Junction Canal*, 3 H. L. Ca. 759. As to the sufficiency of certificate, see *Pashby* v. *Mayor of Birmingham*, 18 C. B. 2. And where under a similar contract the engineer's certificate was withheld, but it was found not to be fraudulently withheld, relief in equity was refused; *Scott* v. *Corporation* of *Liverpool*, 28 L. J. (N. S.) Ch. 230; the judgment in which case contains an elaborate and lucid exposition of the principles affecting the relative liabilities of parties to contracts for the execution of works. See also *Scott* v. *Avery*, 25 L. J. (N. S.) Ex. 30; *Livingston* v. *Ralli*, 24 L. J. (N. S.) Q. B.; *Blackburn* v. *Smaith*, 2 Ex. 183. As to action against a surety where there have been deviations from the contract, see *Ware* v. *Calvert*, 7 A. & E. 143; and see *General Steam Navigation Company* v. *Rolt*, 6 C. B. (N. S.) 550; *Woodcock* v. *Oxford and Worcester Railway Company*, 1 Dr. 521. See implied covenant by vestry to employ a contractor during the time stipulated in contract; *Hornsby* v. *Vestry of St. Luke's, Chelsea*, 2 L. T. Rep. (N. S.) 176, Q. B. Where a party had tendered for works to an incorporated company, which tender was accepted by them but not under seal, and no further contract was executed, it was held that the company could not maintain an action against the party making the tender; *London Dock Company* v. *Sinnott*, 27 L. J. (N. S.) Q. B. 129).

any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract or in any bond or otherwise, for such sum of money or other recompense as to the board or vestry may seem proper.

In respect of breach of contracts.

CL. It shall be lawful for the metropolitan board of works and every district board and vestry to purchase, or to take on lease for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorized to execute under this Act, also any offices and other buildings, yards, stations, or places for deposit of refuse, materials, and things, or any land for the erection and formation of such offices and other buildings, yards, stations, or places for deposit; and also to contract for the purchase, removal, or abatement of any milldam, pound, weir, bank, wall, lock, or other obstruction to the flow of water, whereby sewerage or drainage is interrupted or impeded, and for the purchase of any land, or any right or easement in or over any land, which it may be necessary or expedient to purchase to prevent the obstruction of sewerage or drainage; and also to purchase or take on lease as aforesaid the whole or any part of any streams or springs of water, or any rights therein, which it appears to them necessary to acquire and use for the purposes of cleansing sewers and drains, and the other purposes of this Act, or any land which is deemed by them advisable to purchase or take on lease for the purpose of drawing or obtaining water from springs, or by sinking of wells, and for making and providing reservoirs, tanks, aqueducts, watercourses, and other works, or for any other purpose connected with the works for obtaining such supply of water as aforesaid: Provided always, that nothing herein contained shall authorize the said metropolitan board, or any district board or vestry, to use or permit to be used any such works for the purpose

Power to boards and vestries to purchase lands, &c., for the purposes of this Act.

of carrying water by supply pipes into any house or factory for domestic (*a*), manufacturing, or commercial purposes (*b*).

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

CLI. For the purpose of enabling the said metropolitan board, and every district board and vestry, to obtain any land, or any right or easement (*c*) in or over any land, which they respectively may require for the purposes of this Act, "The Lands Clauses Consolidation Act, 1845," except the provisions of that Act with respect to the recovery of forfeitures, penalties, and costs, shall, subject to the provisions herein contained, be incorporated with this Act; and the provisions of the said Act so incorporated with this Act which would be applicable in the case of a purchase of any land, shall be applicable in the case of the purchase of a right or easement in or over any land; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the metropolitan board, or the district board or vestry, acting under the provisions of the said Act and this Act, as the case may be.

Lands not to be taken compulsorily except by metropolitan board with

CLII. Provided always, that the provisions of the said Lands Clauses Consolidation Act, "with respect to the purchase and taking of lands otherwise than by agreement," (*d*) shall not be incorporated with this Act, save

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(*a*) As to what use of water is included in the expression "domestic use," see *Busby* v. *Chesterfield Water and Gas Company*, 27 L. J. (N. S.) 174, M.C.

(*b*) See 25 & 26 Vict. c. 102, s. 67, *post*, giving power to vestries to compel supply of water to houses where supply can be obtained at a certain rate.

(*c*) The word "land" in the Lands Clauses Act does not include an easement. *Pinchin* v. *London and Blackwall Railway Company*, 24 L. J. Ch. 417.

(*d*) But the powers for the compulsory purchase of land given by the 57 Geo. 3, c. 29, for the improvements mentioned in sect. 80 of that Act, seem to be vested in vestries and district boards. That Act is now, by sect. 73 of 25 & 26 Vict. c. 102, extended to all the parishes in the metropolis. See the clauses,

for enabling the metropolitan board of works to take land or any right or easement in or over land, for the purpose of making any sewers or works for preventing the sewage or any part of the sewage within the metropolis from passing into the Thames in or near the metropolis, or otherwise for the purpose of the sewerage or drainage of the metropolis: Provided also, that no land, or right or easement in or over land, for the purposes aforesaid, shall be taken compulsorily by the said board, without the previous consent in writing of one of Her Majesty's principal secretaries of state. consent of secretary of state.

CLIII. The metropolitan board of works, before applying for the consent of the secretary of state for taking land, or any right or easement in or over land, com- Previous notice to be given (*e*).

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post, Appendix. Vestries and district boards also possess the power of executing certain works on private lands, given by the 67th section of the General Highway Act, 5 & 6 Will. 4, c. 50, and sect. 22 of the Nuisances Removal Act, 18 & 19 Vict. c. 121. Where by a special Act the Lands Clauses Act, "except so much as related exclusively to the taking and purchasing of land by compulsion," was incorporated with it, it was held that the 68th section of the Lands Clauses Act was not excepted, although that section is within the division of the Lands Clauses Act relating to "the purchase and taking of lands otherwise than by agreement;" *Broadbent* v. *The Imperial Gas Light Company*, 26 L. J. (N. S.) 276, Ch. See compulsory powers of taking land extended to land required for roads, spoil banks, &c., 25 & 26 Vict. c. 102, s. 22, and declared applicable to land for deodorizing sewage and other works under the Main Drainage Act; 21 & 22 Vict. c. 104, s. 3; and incorporation of Lands Clauses Consolidation Act with Thames Embankment Act, 1862, by sect. 1 of that Act.

(*e*) The course directed by this section is substituted for that prescribed by the 18th and subsequent sections of the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, with respect to the service of notices on owners and occupiers. The rules as to the sufficiency of notice under the latter Act requiring an accurate statement of the situation and quantities of the lands and the correctness of the plans will be applicable. See *Sims* v. *Commercial Railway Company*, 1 Railway Ca. 431; and *Kemp* v. *London and Brighton Railway Company*, 1 Railway Ca. 495.

pulsorily, as aforesaid, shall publish, once at the least in each of four consecutive weeks, in one of the daily newspapers published in the metropolis, an advertisement describing the nature of the works in respect of which the land, right, or easement, is proposed to be taken, naming a place where a plan of the proposed works is open for inspection at all reasonable hours, and stating the quantity of land or the particulars of the right or easement that they require for the purpose of such works, and shall serve a notice on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land intended to be taken, or of the land in or over which such right or easement is intended to be taken, such service to be made four weeks previously to the application to such secretary of state, and such notice shall state the particulars of the land, right, or easement so required, and that the metropolitan board are willing to treat for the purchase thereof, and as to the compensation to be made for the damage that may be sustained by reason of the proposed works.

Power to dispose of lands or property not wanted (*f*).

CLIV. The metropolitan board of works, and any district board or vestry, may sell and dispose of any land purchased by them under this Act, and any property whatsoever vested in them under this Act, which it may appear to them may be properly sold or disposed of; and for completing and carrying any such sale of any land into effect such board may make and execute a conveyance of the land sold and disposed of as aforesaid unto the purchaser, or as he shall direct, and such conveyance shall be under the seal of the said board or vestry; and

(*f*) This power is not subject to the restrictions placed upon the alienation of corporate property by municipal corporations by 5 & 6 Will. 4, c. 76, s. 94, and 8 Vict. c. 18 (Lands Clauses Act), s. 15. The special Acts obtained by the metropolitan board under the powers conferred by sect. 144 of this Act, contain express provisions with respect to the sale of land, &c.

the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the seal of the said board or vestry shall be a sufficient discharge to the purchaser of any such land or any other such property as aforesaid for the purchase money in such receipt expressed to be received; and the money arising from such sale of any land purchased under this Act, and (except as hereinafter otherwise provided) of any such property, shall be applied in aid of the rate out of which the expenses of the purchase of such land or providing such property have been or are authorized to be defrayed under this Act; and the money arising from the sale of any property vested in any such board or vestry under this Act, and which, before becoming so vested, was vested in any commissioners or other body, or in any officer of any commissioners or other body, or in any surveyor of highways, shall be applied in or towards the discharge of any debts or liabilities for the discharge whereof rates are by this Act authorized to be raised in the parish, or part, to the commissioners or other body for the management of the paving, lighting, or cleansing whereof such property may have belonged before the commencement of this Act, and, subject as aforesaid, shall be applied in aid of such rate to be raised under this Act in such parish or part as to the board or vestry disposing of such property may seem just; and any such board or vestry may let any land purchased by or vested in them under this Act, and which for the time being is not required for the purposes thereof, in such manner and on such terms as such board or vestry may see fit.

Owners of land may on sale reserve a right of pre-emption.

CLV. Provided always, that where any land or any right or easement in or over land is purchased by the said metropolitan board, or any district board or vestry, under this Act, it shall be lawful for the owners of or parties entitled to sell or convey such land, right, or

easement to reserve upon the sale thereof to such board or vestry in and by the conveyance such right of pre-emption to the person for the time being entitled to the land (if any) from which the land so purchased was severed, or in or over which such right or easement is granted, as is provided by sections 128, 129, and 130 of the said Lands Clauses Consolidation Act (*g*); but, except where such right of pre-emption is so reserved, there shall be no such right, notwithstanding the incorporation of the said Lands Clauses Consolidation Act with this Act.

Penalty for withholding property transferred to metropolitan board or any vestry or district board.

CLVI. In case any person having the charge, control, or possession of any property, matters, or things vested in the metropolitan board of works, or the vestry of any parish, or any district board, by or under this Act, neglect or refuse to give up the same, on demand, to such board or vestry, or such person as they respectively may order, every person so offending shall, upon being convicted thereof before any two justices of the peace, for every such offence forfeit and pay, over and above the value of the property not given up, such sum not exceeding 5*l.* as the said justices may think fit (*h*).

Regulations as to breaking up turnpike roads (*i*).

[CLVII. The metropolitan board of works, and any vestry or district board, may, where necessary for the purpose of executing any work authorized by this Act, open and break up any turnpike road, under and subject to the restrictions and provisions hereinafter contained; that is to say, seven days' previous notice, with a full description of any intended works, shall be left at the office of the commissioners or trustees of the road; and, except by the permission of the said commissioners or trustees,

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(*g*) See the Act, *post*, Appendix.

(*h*) As to recovery of penalty, see sect. 227, *post*.

(*i*) This section is repealed by 25 & 26 Vict. c. 102, s. 33, *post*, which modifies the regulations for breaking up turnpike roads. See sect. 244, saving rights of commissioners of turnpike roads.

the traffic of the road shall not at one time be stopped or hindered along more than half of its width, nor, if the half left open be of less than the clear width of fourteen feet, along more than one hundred yards in length; and no alteration shall, except by such permission as aforesaid, be made in the inclination of any part of the road of more than one foot in sixty feet; and all work shall be done under the superintendence of the surveyor of the said commissioners or trustees; and the party doing the works shall cause all openings in the road to be effectually secured and fenced, and affix and maintain lights during the night near to the place where the ground is open, so as to prevent accidents; and the said commissioners or trustees are hereby absolved from all liability in respect of any accident arising in consequence of such works; and the party doing the works shall restore every road so opened or broken up to its original state as to surface and materials, and, in order to meet the future expenses consequent on the subsidence of materials newly filled in, shall pay to such commissioners or trustees, on demand, such sum as they shall require for such purpose, not exceeding 1*s.* for every superficial square yard, and, so far as the works affect the same, shall make good all drainage, paving of water channels, kerbs of footpaths, and other matters and things connected with the maintenance of the road; and in default the surveyor of the said commissioners or trustees may cause the necessary work to be done; and in all cases of expense incurred by any such surveyor, on the default of the party doing the works, such party shall pay such expense to the commissioners or trustees, on demand.]

Provisions for defraying Expenses of Vestries and District Boards.

How sums to be raised by vestries and

CLVIII. Every vestry and district board shall, from time to time, by order under their seal, require the

district boards for defraying their expenses (*a*).

overseers (*b*) of their parish, or of the several parishes in their district, to levy and to pay over to the treasurer of such vestry or board, or into any bank in such order mentioned, and within the time or times thereby limited, the sums which such vestry or board may require for defraying the expenses of the execution of this Act (*c*) (and such orders may be made wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred); and every such vestry and board shall distinguish in their orders sums required for defraying expenses of constructing, altering, maintaining, and cleansing the sewers or otherwise connected with sewerage, and also, where the Act of the session holden in the third and fourth years of King William the Fourth, chapter ninety, or any other Act by virtue whereof land is rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is wholly exempted from being rated in respect of such expenses, is in force in any parish, or any part of any parish, at the time of the passing of this Act, distinguish, as regards such parish, or part, the sums required for defraying expenses of

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(*a*) Where parishes have been united into a district under this Act, the expense of keeping the pavements in repair, and every other expense of cleansing and lighting, should be charged on each parish according to its rateable value; *The Overseers of the Poor of St. Botolph Without, Aldgate*, v. *The Board of Works for the Whitechapel District*, 29 L. J. (N. S.) M. C. 228. And, where the vestry or board have taken into consideration the special circumstances which may call for the application of the 159th sect. the court will not interfere with the exercise of their discretion as to the amount they may call for; *ibid.* This decision lays down the principle that the board are not bound to take into consideration the expenditure in each separate parish.

(*b*) By the 250th section the term "overseers" includes any persons authorized to make and collect, or cause to be collected, the rate for the relief of the poor in any parish. See *Christie* v. *Guardians of St. Luke's, Chelsea*, cited in note (*h*) to sect. 161.

(*c*) See note (*c*) to sect. 144, *ante*, as to expenses of legal proceedings.

lighting their parish or district (*d*) from sums required for defraying other expenses of executing this Act; but every such vestry and board may cause to be raised as expenses connected with sewerage such portion of the expenses incident to the conduct of their business in relation to sewerage, in common with the conduct of their other business under this Act, as to such vestry or board may seem just; and the overseers or collectors, in the receipts to be given for the sums levied or collected by them, shall distinguish the rate in the pound required for sewerage expenses, and the rate required for the other expenses of this Act.

Vestries and boards may exempt parts not benefited by expenditure from payment (*e*).

CLIX. Where it appears to any vestry or district board that all or any part of the expenses for defraying which any sum is by such vestry or board ordered to be levied as aforesaid have or has been incurred for the special benefit of any particular part of their parish or district, or otherwise have or has not been incurred for

(*d*) The effect of this provision is to direct every vestry and district board to distinguish the sum required for lighting the whole parish, and to order a separate sum to be levied for defraying such expenses, which must be by a lighting rate over the *whole* parish; *Overseers of the Parish of St. James, Westminster*, and *the Overseers of the Parish of St. Mary, Battersea*, 29 L. J. (N. S.) M. C. 26.

(*e*) In *Howell* v. *The London Dock Company*, 27 L. J. (N. S.) M. C. 177, it was held that under this section a duty is cast on the vestry to apportion the burthen according to the benefit, and that if part of the property of the London Dock Company had not equal benefit with the other property in the parish rated to the poor from the paving expenses, the company were entitled to be relieved in respect of that part. It was also held to be sufficient if the fact of inequality *existed*, whether it had *appeared* to the vestry or not; and that the company were exempt from being rated in respect of profits not immediately connected with the use of any paved streets; *Ibid.* In *R.* v. *The Great Western Railway Company*, 28 L. J. (N. S.) M. C. 59, Erle, J. objected to this decision being cited as an authority. Where a district board have come to a decision that a party is not entitled to exemption, the court will not interfere; *West Middlesex Water Company* v. *Wandsworth District Board*, 22 J. P. 336.

the equal benefit of the whole of their parish or district, such vestry or board may, by any such order, direct the sum or sums necessary for defraying such expenses or any part thereof to be levied in such part, or exempt any part of such parish or district from the levy, or require a less rate to be levied thereon, as the circumstances of the case may require; and any such board may refrain, where any entire parish ought in their judgment to be so exempt, from issuing an order for levying any money thereon, notwithstanding they may issue an order or orders for levying sums upon any other parish or parishes in their district.

Provisions for cases where a part of a parish is placed under the management of the vestry or board of adjoining parish or district.

CLX. Where part of any parish is placed for all or any of the purposes of this Act under the management of the vestry or district board of an adjoining parish or district (*f*), the sums which such vestry or board may require for defraying the expenses of executing this Act by such vestry or board in the part so placed under their management shall be from time to time paid, upon their orders, by the vestry of the parish whereof such part is so placed under the management of such other vestry or board, or if such parish is comprised in a district formed by this Act then by the district board of such district; and such sums shall be raised by the vestry or board upon whom such orders are made in like manner as if the expenses in respect whereof the same are required had been incurred by them in executing this Act.

Overseers to collect the rate in the same manner as the poor rate.

CLXI. The overseers of the poor of every parish to whom any such order as aforesaid is issued, shall levy the amount mentioned therein according to the exigency thereof, and shall for that purpose make separate equal pound rates (*g*) upon their parish, or the part thereof

(*f*) That is under the provision contained in sect. 140.

(*g*) Under this Act no rate except the lighting and sewers rate need be kept distinct from the general rate, and all property must be rated to the general rate on the same scale as the poor rate in the parish, without any reference to differential scales of rating prescribed by a local Act; *R.* v.

upon which any sum specified in such order is required to be levied, in respect of each sum thereby ordered to be levied; that is to say, a separate rate in respect of each sum ordered to be levied for defraying expenses connected with sewerage, to be called a sewers rate (*h*);

The Great Western Railway Company, 28 L. J. (N. S.) M. C. 59. See provisions in the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, relative to valuation lists of rateable property.

(*h*) In *Christie* v. *The Guardians of the Poor of St. Luke, Chelsea*, 27 L. J. (N. S.) M. C. 153, it was held that a rate made by the guardians of the poor pursuant to the order of the vestry, to whom a precept had been issued by the metropolitan board of works, requiring them to pay to the treasurer of the board a sum for defraying the expenses of the board was good, though it did not set out the precept or the order of the vestry, and that it was no objection to the rate that the order of the vestry was addressed to the overseers instead of to the guardians, as the guardians are overseers within the meaning of sect. 250; and as to what is a sufficient signing of the rate, *ibid.* A question was also raised in that case, whether there was any power of appeal against such a rate; but the right of appeal exists; *Empson* v. *Metropolitan Board of Works*, 25 J. P. 677.

The sewers rate ordered to be raised by this section is to be levied on the persons, and in respect of the property by law rateable to the relief of the poor in the respective parishes; and it is to be assessed upon the net annual value of such property, ascertained by the rate for the time being for the relief of the poor; subject, however, to the partial exemption created by the 103rd section, providing that particular descriptions of land should be rated only in the proportion of one-fourth, and to the exemptions, reductions, or allowances pointed out by the 164th section. It is likewise subject to the exemptions from the poor rate applicable to property of certain descriptions, or occupied in a particular manner created by express statutes, such as property occupied by scientific or literary societies, 6 & 7 Vict. c. 36. See *Lumley's Commentary on the Parochial Assessment Act.* And further, it is governed by the peculiar provisions which may exist in particular parishes under local Acts in relation to poor rates. The rates for sewerage expenses made by the commissioners of sewers of the city of London, under the provisions of the 11 & 12 Vict. c. 163, s. 168, *et seq.*, are assessed upon every person who inhabits, &c., any house or building, whether liable to be assessed for the relief of the poor or not.

All persons whose property derives benefit from the sewers of the commissioners, or other body, are liable to be assessed to

a separate rate in respect of each sum ordered to be levied for defraying expenses of lighting (where a separate sum is ordered to be levied for defraying such ex-

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the sewers rate in respect of that property, and this principle has been laid down in the text books, and affirmed by a long current of decisions; *Anselm* v. *Barnard*, 2 Keb. 675; *R.* v. *Wright*, 2 Keb. 42; *Masters* v. *Scroggs*, 3 M. & S. 447; *Stafford* v. *Hamston*, 2 B. & B. 691; *R.* v. *Commissioners of Sewers for the Tower Hamlets*, 9 B. & C. 517; *St. Katherine Dock Company* v. *Higgs*, 14 L. J. (N. S.), Q. B. 348, affirmed in error, 16 L. J. (N. S.), Q. B. 377; *Soady* v. *Wilson*, 3 A. & E. 248; *The Metropolitan Board of Works* v. *Vauxhall Bridge Company*, 26 L. J. (N. S.). Q. B. 253; Serjt. Woolrych, Law of Sewers, p. 66. But the application of this rule to the assessments upon property in the metropolis, having regard to the provisions of the Act allowing exemptions in certain cases, will be found to be attended with considerable difficulty. In *Masters* v. *Scroggs*, *supra*, it was decided that a person who lived at Hampstead, whose basement story was 307 feet above the crown of the arch of the Battle-bridge sewer, so that the obstruction of that sewer could not throw back the water to the injury of his premises, was not liable to be rated; but in *Soady* v. *Wilson*, *supra*, it was held that the benefit need not be immediate, and that it might be sufficient if the property were benefited by reason of the public streets in the neighbourhood being properly drained. In the judgment in that case Lord Denman, C. J., says:—"The benefit is not required to be immediate, nor do the cases, nor the commission itself, nor the statute say anything of the nature or amount of the benefit. The possibility of benefit may be so extremely small that a jury would not have found the fact stated in the case; but, on the other hand, the kind of benefit may be of high value, as if a house was inaccessible because surrounded by marshes, and the works of drainage had made them perfectly dry;" and see *Dorling* v. *Epsom Local Board of Health*, 24 L. J. (N. S.) M. C. 152; 5 E. & B. 471. In the *Metropolitan Board of Works* v. *The Vauxhall Bridge Company*, *supra*, though in that proceeding (an action to enforce a rate not appealed against), the court refused to give any opinion as to whether there was any benefit from the sewers to the property of the company, they intimated that the commissioners were bound to consider (1) whether the company were liable to be rated at all, and (2) at what amount. Therefore, if they were rated in an undue proportion, having regard to the *amount* of benefit derived, they might have been relieved on appeal to the sessions. If the liability to be rated is tried by the rule laid down

penses), to be called a lighting rate; and a separate rate in respect of each sum ordered to be levied for defraying

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in *Masters* v. *Scrogge, supra*, a large amount of property, which has heretofore been included in the sewers rate of the metropolis, will escape liability; but not so if the slender amount of benefit which was derived in *Soady* v. *Wilson, supra*, is sufficient to render property rateable, as very few localities under the management of the vestries and district boards of the metropolis are wholly unprovided with surface-drainage. As on appeal the quarter sessions are to consider whether the rate bears a due proportion to the benefit derived, it may be that differential ratings of house property may be introduced in parishes, a consequence which would be attended with many inconveniences. The former Westminster commissioners rated all houses abutting on a public road, the surface of which drained into any of their sewers. See further note (*m*) to sect. 164, *post*.

All objections against a rate good on the face of it (except for such defects as make the rate a nullity, as where a person is rated in respect of land not in his occupation; *Milward* v. *Caffin*, 2 W. Bl. 1330; and see observations of *Crompton*, J., in *Luton Local Board of Health* v. *Davies*, 29 L. J. (N. S.) M. C. 173), must be taken by way of appeal; *Empson* v. *Metropolitan Board of Works*, 25 J. P. 677; *Churchwardens of Birmingham* v. *Shaw*, 10 Q. B. 868; 18 L. J. (N. S.) M. C. 89; *Luton Local Board of Health* v. *Davies, supra*, even where the rate was made, not by the overseers but by individuals appointed by the metropolitan board, under sect. 68, on the default of a district board; *Empson* v. *Metropolitan Board of Works, supra*. Therefore an objection that the property derives no benefit; *R.* v. *Newman*, 29 L. J. (N. S.) M. C. 117, or that the rate was made for an illegal purpose under Public Health Act, 11 & 12 Vict. c. 63; *Luton Local Board of Health* v. *Davies, supra*, can only be taken on appeal. To render property rateable there must be an *occupier*. See *Neave* v. *Wrather*, 3 G. & Dav. 221; but special provisions on this subject are contained in many local Acts. A tenement in the King's dockyard, which derived benefit from the sewers occupied by a government officer who paid no rate, was held liable to be rated; *Netherton* v. *Ward*, 3 B. & A. 2; but not property in the personal occupation of the sovereign, as Kensington Palace; *Attorney-General* v. *Donaldson*, 10 M. & W. 117. Arrears of poor rates may be levied by others than the immediate successors of those who made the rate; *Overseers of East Dean* v. *Everett*, 25 J. P. 565. A magistrate has no jurisdiction on the hearing of a complaint for nonpayment of a sewer rate, to state a case under 20 & 21 Vict. c. 43. *Reg.* v. *Newman, supra*.

other expenses of executing this Act, to be called a general rate; and shall make such respective rates of such amount in the pound on the annual value of the property rateable as will in their judgment, having regard to all circumstances, be sufficient to raise the sums specified in such order; and such rates shall be levied on the persons and in respect of the property by law rateable to the relief of the poor in the respective parishes (*h*), and shall be assessed upon the net annual value of such property ascertained by the rate for the time being for the relief of the poor (*i*); and the said overseers shall, for the purpose of levying such rates, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor; and all such rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal and to excusing persons from payment on account of poverty and otherwise, as the rate for the relief of the poor in the same parish; and such overseers shall pay (*k*) to the treasurer of the vestry or board, or otherwise as in such order directed, the amount mentioned in the order, within the time or respective times specified for that purpose, and the excess, if any, which may have

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(*h*) This directs the vestry to guide itself by the rate for the relief of the poor in each parish, and no property should be separately assessed or exempt unless it be so within the poor rate for the parish.; *R.* v. *Great Western Railway Company*, 28 L. J. (N. S.) M. C. 59. But see *Howell* v. *London Dock Company*, 27 L. J. M. C. 177, and note (*e*), p. 121, *ante*. There is no express direction in the section as to publication, but the general words of the enactment subjecting the rates made under it to all the incidents of the poor rate, would no doubt be held to require publication. Many of the local Acts existing in parishes contain special provisions as to publication.

(*i*) See provisions of Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, as to valuation lists of rateable hereditaments and exception in sect. 29 of that Act.

(*k*) See sect. 14 of 25 & 26 Vict. c. 102, *post*, enforcing payment and accounting by overseers, and annexing penalties in case of default, and as to appointment of paid collectors

been levied beyond such amount, which excess shall be placed to the credit of the parish or part in which the same has been levied; and the said overseers shall at the time of making any such payment deliver with the money a note in writing signed by them, specifying the amount so paid, which note shall be kept as a voucher for the receipt of that particular amount; and the receipt of the treasurer of the vestry or board, or of any proper officer or person of or belonging to any bank into which such money is so paid, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount.

Public buildings and void spaces now rateable (except churches and burial grounds) to continue rateable (*l*).

CLXII. Provided always, that all such hospitals, public schools, and other public buildings, dead walls, and void spaces of ground as are now by law rateable to any rate for the costs and charges of paving or repairing the pavements within any parochial or other district, either separately or jointly with any other object or objects, (except only places of religious worship, and burial grounds, or places which have been used for burial grounds, and are not used for any other purpose,) shall be rateable under this Act to the like extent and for the like objects or purposes as they may now be rated, and the rates to be made in respect of such objects or purposes shall be payable by the persons now liable to pay the same, and be recoverable in like manner, as any rate to which such buildings and spaces of ground are now rateable as aforesaid in respect of the like objects or purposes.

Land to be rated to the sewers rate at one fourth part of

CLXIII. Provided also, that any sewers rate raised under this Act shall, as regards all land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery

(*l*) See the 187th section of the City Sewers Act, 11 & 12 Vict. c. 163, as to rating property of this description in the city of London.

its annual value. (*l*)

ground, be assessed and levied in the proportion of one fourth part only of the net annual value of such land.

Existing exemptions in respect of sewers rate to be allowed.

CLXIV. Provided also, that where any property was at the time of the issuing of the first commission under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, entitled to exemption (*m*) from or to any reduction or allowance

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(*l*) This proviso is taken from the 15 & 16 Vict. c. 64, s. 1, "An Act to continue and amend the Metropolitan Sewers Act, 1848," and was not contained in the original Metropolitan Sewers Act, 11 & 12 Vict. c. 112. The provision was based on the 88th section of the 11 & 12 Vict. c. 63. (Public Health Act.)

(*m*) In considering the application of this provision it is necessary to refer to the proviso to the 76th section of the 11 & 12 Vict. c. 112, to the effect that where any property was by law, or by the practice of the existing commission or commissioners of sewers, entitled to exemption, wholly or partially, from or to any reduction or allowance in respect of the sewers rate, the commissioners should in making the district sewers rate observe and allow such exemption, reduction, or allowance. The title to exemption, wholly or partially, was *by law* or by the *practice* of the existing commissioners. The exemptions from sewers rates existing by the general law are stated by Callis, pp. 222, 223. The records of the former commissions present a few examples of property, which by reason of the obligation of the owners to do works of repair, cleansing, &c., were exempted from the ordinary levies. In March, 1850, a rate of the metropolitan commissioners of sewers was successfully appealed against by an inhabitant of High-street, Poplar, on the ground that he, in common with the other owners and occupiers of messuages and lands in that locality, had by reason of their tenure been bound to cleanse and scour the Poplar ditch, and by the court minutes of the Poplar commission it appears that in the case of *Horne* v. *Farmer*, tried before Lord Tenterden in the year 1826, the jury found that such an exemption existed. Exemptions on similar grounds appear to have prevailed under the Greenwich commission. Under some of the former commissions tithes were either wholly exempted or rated at a lower rate, but there appears to have been no general practice totally to exempt them. The rule, as laid down by Callis, is, that tithes were not liable to be rated in the hands of a spiritual person, except by a custom, pp. 129, 132; and see Serj. Woolrych, Law of Sewers, 2nd ed. p. 88. But

in respect of the sewers rate, such exemption, reduction,

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in Wood's Inst. p. 176, it is said that, "Tithes are at this day chargeable with all payments imposed by Act of parliament, if they are not excepted." The metropolitan commission of sewers were advised by three eminent counsel, two of whom have since become judges of the superior courts, that the spiritual owner of tithe rectorial or vicarial was liable to be rated under 11 & 12 Vict. c. 112, s, 76, except only where and so far as by the *practice* of the then existing commissions he was entitled to exemption, reduction, or allowance. The practice with regard to rating tithes varied under the several commissions. The Greenwich commissioners were advised by Lord Abinger, when at the bar, that tithes were rateable to the sewers rates under that commission, and they were so rated. The cases of *R.* v. *Lamb* and *R.* v. *Goodchild*, 27 L. J. (N. S.) M. C. 237, 251, are only authorities to show that tithes were not rateable in the parish of Hackney, because it had been the practice of the commission within which that parish was situate to omit them from their rates. But they go no further. The question still remains, whether tithe commutation rent charge will be held rateable in those districts in which it was formerly the practice to rate them. It was customary under some of the commissions to rate land in a less proportion than houses and buildings; and the practice varied under the different commissions as to the rating of the mains and pipes of water and gas companies. In some instances they were rated on the full rental, in others on a reduced amount, and in others not at all. It is presumed that where total exemption from rateability attached to this species of property in a district, the right of exemption still continues. In a recent case, on appeal to the Middlesex sessions by a water company against a sewer rate made by the parish of Hackney, on their mains and pipes, the sessions reduced the rate to one half, holding that the company were only benefited to that extent in respect of the property in question; but as it was the practice wholly to exempt this description of property from sewers rates under the Tower Hamlets commission, within the limits of which that parish was situate, it would seem that the company were not rateable at all. Cases of the foregoing nature, in which the property entitled to exemption or reduction can readily be ascertained by a reference to the rate books, do not present much difficulty. But numerous and important questions may arise as to what property may be entitled to any reduction or allowance in respect of sewers rates, on the ground that it has no communication with the public sewers, and therefore is not benefited.

or allowance shall be observed and allowed in levying any sewers rate under this Act.

Existing exemptions of land from lighting rates to be allowed (*n*).

CXLV. Provided also, That in every parish or part of a parish in which at the time of the passing of this Act the Act of the session holden in the third and fourth years of King William the Fourth, chapter ninety, is in force, the owners and occupiers of houses, buildings, and

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By the 10 & 11 Vict. c. 217, s. 15, (repealed) it was provided that no rate should be levied by the Surrey and Kent commissioners in respect of any land, houses, buildings, &c., so long as there should be no work or drainage of the commissioners, within 200 hundred yards of the same. The question arises, Does that exemption from rateability still exist? It is believed that it is not allowed in practice; but the liability of property so rated must be determined on the strict construction of this and the enactments in the former Acts. In *Luscomb* v. *Local Board of Health for Plymouth*, 27 L. J. (N. S.) M. C. 299, it was held that under sect. 88, of the Public Health Act, 11 & 12 Vict. c. 63, property was entitled to exemption only in respect of its *kind* and not in respect of its *locality*. But it must be borne in mind that the words in the section of the Public Health Act referred to are "any *kind* of property," whereas the present section uses the expression "any property" only. The amounts collected in the several parishes may be materially affected in case of any extensive introduction of differential rates, and it is extremely desirable that some clear and explicit legislative provision should be made defining the relative amounts at which various descriptions of property which may be entitled to allowance or reduction, should be rated. This becomes the more necessary when it is considered that sewers rates are now devoted to very many objects wholly differing from those to which they were originally applicable. The court, in *Metropolitan Board of Works* v. *Vauxhall Bridge Company*, 26 L. J. (N. S.) Q. B. 253, seemed to think it reasonable that property in the parish should be made to contribute to the expenses of general sanitary regulations if the law would allow it, but that it did not. It is certainly difficult to discern why all the cost of new thoroughfares and parks promoted by the metropolitan board, the expenses of passing the Metropolitan Gas Act, and other matters having no sort of connection with sewers, should be exclusively thrown upon a rate the amount of which may be materially affected by exemptions resting on grounds which appear wholly foreign to such expenditure.

(*n*) In *Reg.* v. *Vauxhall Waterworks Company*, 6 E. & B. 1108, 3 Jur. (N.S.) 411, the company were held to be rateable for

property other than land shall be rated to every lighting rate made under this Act at a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated in such lighting rate; and in every parish or part of a parish in which under any other Act land is now rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is now wholly exempted from being rated in respect of such expenses, such land shall continue to be rated to every lighting rate made under this Act at such less amount, or, where such land is now wholly exempted as aforesaid, shall be wholly exempted from such rate.

Overseers on non-payment of the rate shall be distrained upon;

CLXVI. In case the amount ordered by any such order as aforesaid to be paid by the overseers of any parish be not paid in manner directed by such order and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the vestry or board, or by any person authorized by them for this purpose, to issue his warrant for levying the amount, or so much thereof as may

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their mains and pipes under this section on the lower scale. In *Peto and others* v. *the parish of West Ham*, 28 L. J. (N. S.) M. C. 240, it was held (*dissentiente, Erle, J.*) that a wet dock or basin of ninety-five acres was properly *ejusdem generis* with the houses and buildings mentioned in the Act, and that the occupiers were rateable at the higher amount. Before the passing of the Metropolis Local Management Act, the East London Waterworks Company had been assessed to a lighting rate under a local Act regulating the lighting of the hamlet of Mile End Old Town, but on appeal had been held by the court not to be rateable to such rate, and the court of Queen's Bench decided that by the terms of this section they were exempt from liability to be rated under its provisions; *East London Waterworks Company* v. *The Overseers of the Poor of the Hamlet of Mile End Old Town*, 29 L. J. (N. S.) M. C. 66. Where part only of a parish was before this Act exempted, under the 3 & 4 Will. 4, c. 90, the other part is not entitled to this exemption, but must be assessed at the higher rate; *R.* v. *Fitch*, 1 L. T. Rep. (N. S.) 327.

and in default of sufficient distress the arrears may be levied on the parish.

be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like methods.

Provision for cases where the vestry of any parish in schedule (A.) make the poor rate.

CLXVII. Where the vestry of any parish mentioned in schedule (A.) to this Act make the rate for the relief of the poor in such parish, such vestry shall from time to time raise and levy the sums required for defraying their expenses of executing this Act in like manner as overseers are required to do with respect to the sums for which orders are made upon them by any vestry under this Act, and shall, in raising such sums, act upon the like principles and have the like discretion as any vestry making orders upon overseers under this Act; and where any parishes maintain their poor in common by a common rate, the orders for levying any money by this Act directed to be made on the overseers of such parishes shall be made on the overseers by law authorized to levy such rate thereon, and such sums shall be levied by such overseers, in manner provided by this Act, as if such parishes were one parish.

Special persons may be appointed to levy rates in certain cases (*o*).

CLXVIII. Any vestry or district board may, in case of any default or neglect of any overseers to pay the amount required by any such order as aforesaid within the time and in the manner directed by such order, and the said metropolitan board may, in case of any default or neglect of any vestry or district board to pay

(*o*) The power to levy includes the power of making a rate, and where a rate made by assessors appointed by the metropolitan board under this provision is good on the face of it, the ratepayer cannot, on the summons for non-payment, insist that the board had no power to issue their precept, and that the appointment of the assessors was invalid, as this is matter of appeal only. The rate made by such assessors may be

the amount required by any precept of the said metropolitan board within such time and in such manner as may be therein mentioned, appoint persons to levy any money required by such vestry or board for the purposes of this Act in any parish or district, and such persons shall proceed in the same manner, and have the same powers, remedies, and privileges, and be subject to the same regulations and penalties, with reference to the levying of such money, as any overseers would have had or been subject to with reference to levying any such money in pursuance of an order of the vestry or district board, or, where the same might be levied by the vestry under this Act, as such vestry would have had or been subject to with reference to levying the same. (*p*)

Provision for deduction by tenants of sewers rate. (*q*)

CLXIX. As between landlord and tenant, every tenant, whether his tenancy have commenced before or after the passing of this Act, and who if this Act had not been passed would have been entitled to deduct against or to be repaid by his landlord any sum paid by such tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord any sewers rate levied on him under this Act.

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appealed against in the same manner as a rate made by overseers under s. 161. The question of whether the rate has been duly published is one of fact, and if there be any evidence to support the decision of the magistrate, the court will not interfere; *Empson* v. *Metropolitan Board of Works;* 25 J. P. 677; 3 L. T. Rep. (N. S.) 624.

(*p*) See the provision in 21 & 22 Vict. c. 104, s. 15, *post*, as to the making of rates by metropolitan board on default of vestries, &c., in payment of sums assessed for metropolis main drainage rate.

(*q*) The sewers rate is a landlord's tax, and in the absence of any agreement binding the tenant to pay such rate, it may be deducted from the rent. A covenant to pay all rates includes sewers rates. See *Waller* v. *Andrews*, 3 M. & W. 312; *Bennett* v. *Womack*, 7 B. & C. 627.

Provisions for defraying Expenses of Metropolitan Board.

Sums to be assessed upon the city and other parts of the metropolis by metropolitan board for defraying expenses.

[CLXX. (*a*) The metropolitan board of works shall from time to time ascertain and assess upon the City of London and the other parts of the metropolis the sums which in their judgment ought to be charged upon the said city and such other parts respectively for defraying the expenses of the said board in the execution of this Act, (*b*) having regard to the annual value of the property in the several parts of the metropolis, and having regard, in the case of expenditure on works of drainage, to the benefit (*c*) derived from such expenditure by the several parts of the metropolis affected thereby; and any such sum may be so assessed wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred; and for the purposes of such assess-

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(*a*) This section is repealed by the 5th section of the 25 & 26 Vict. c. 102, *post*, which contains new provisions with respect to assessments by the metropolitan board. See the 21 & 22 Vict. c. 104, s. 10, *et seq.*, as to assessments for the metropolis main drainage rate.

(*b*) See note to s. 144, *ante*, as to expenses of legal proceedings. By the Thames Embankment Act, 1862, *post*, Appendix, the expenses of repairing the Thames embankment are to be paid out of monies raised for defraying the ordinary expenses of the board. See s. 22. The Metropolitan Gas Act, 1860, 23 & 24 Vict. c. 125, s. 6, directed that the costs, &c., of, and incident to its passing, and preliminary thereto, should be paid by the metropolitan board out of monies to be levied by them from the several vestries, &c. See *Wyatt* v. *The Metropolitan Board of Works*, 31 L. J. (N. S.) Q. B. 217.

(*c*) The court of Queen's Bench refused to issue a *certiorari* to bring up an order of assessment made under this section and the precept issued pursuant thereto, the ground of the application being that the parish on which the assessment was made derived no benefit from a part of the expenditure included in it; *Ex parte Vestry of St. Marylebone*, 22 J. P. 799. See now 25 & 26 Vict. c. 102, s. 5, *post*, as to criterion for assessments.

ment the annual value of the property in such several parts shall be estimated according to the estimate or basis on which the county rate is assessed (*d*), or, where there is no such county rate, according to a like estimate.] (*e*)

Power to metropolitan board or any one authorized by them, to inspect rates made for county or part of county within the metropolis.

CLXXI. The clerk of the said metropolitan board, or any person authorized by the said board in this behalf, may from time to time inspect any rate made or to be made for any county any part of which is within the metropolis; and any basis or standard for the county rate of any such county, and any returns concerning all or any of the parishes or places, whether parochial or extra-parochial, in the metropolis, delivered or to be delivered in pursuance of any Act relating to county rates, and any rate made by the commissioners of sewers of the city of London, and any valuation on which the same is made, and may take copies or extracts from any such rates, basis or standard, returns or valuation, without payment of any fee or reward; and if any person having the custody of any such rate, basis or standard, return or valuation, wilfully neglect or refuse to permit any such clerk or person authorized as aforesaid to inspect the same, or to take copies or extracts of (*f*)

(*d*) See 15 & 16 Vict. c. 81.

(*e*) This means a like estimate to that provided by the 15 & 16 Vict. c. 81, ss. 2 & 6, which is according to the full and fair annual value of the property rateable to the relief of the poor in every parish, &c. Where there is no county rate, as in the city of London, the liberty of the Tower, and other places, it is necessary to resort to other rates, namely, the sewers and consolidated rates under the City Sewers Act, the Tower liberty rate, and the metropolitan police rate, which are all founded upon a similar estimate to that which forms the basis of the county rate.

(*f*) By s. 17 of 21 & 22 Vict. c. 104, *post*, the metropolitan board may require to be furnished with copies of accounts, and the power to demand copies of poor and other rates, &c., is given to the board as well as to vestries and district boards by s. 15 of 25 & 26 Vict. c. 102, *post*.

or from the same, at all reasonable times, he shall forfeit for every such offence any sum not exceeding ten pounds.

Payment to be obtained from the city and from parishes by precepts to the chamberlain of the city and to vestries and district boards (*a*).

CLXXII. For obtaining payment of the sums so assessed upon the city of London and the parishes mentioned in schedules (A.) and (B.) to this Act, the said board shall issue precepts under their seal, requiring payment thereof to their treasurer, or into any bank therein mentioned, within such time as may be therein limited, and every such precept for any sum assessed upon the city of London shall be directed to the chamberlain of the said city; and every such precept for any sum assessed upon any parish mentioned in schedule (A.) to this Act shall be directed to the vestry thereof; and every such precept for any sum assessed upon any district mentioned in schedule (B.) to this Act, or any parish comprised therein, shall be directed to the board of works for such district; and where any such sum is assessed upon any part of any parish or district, the said metropolitan board shall specify in their precept the part of such parish or district upon which such sum is assessed.

Payment of sums assessed upon the city.

CLXXIII. The chamberlain of the city of London shall, out of any monies in the chamber of the said city, pay to the treasurer of the metropolitan board of works, or otherwise as they may direct, the sums required by their precepts, within such time as may be therein mentioned; and all payments so made by the said chamberlain shall be charged by him against and reimbursed to him out of any rates which the commissioners of sewers of the city of London are authorized to direct to be made under any Act (*b*) relating to the sewerage of the

(*a*) By the 25 & 26 Vict. c. 102, s. 13, *post*, assessments and precepts may be amended.

(*b*) The rates made by the commissioners of sewers of the city of London are made under the 11 & 12 Vict. c. 163,

said city; and such commissioners shall have full power to raise every such sum by any such rate which they may be authorized to direct to be made as aforesaid, or by any addition thereto.

Payment by vestries and district boards of sums assessed by metropolitan board.

CLXXIV. All sums which any vestry or district board may be required to pay by such precepts as aforesaid shall be paid by such vestry and board respectively within such time as may be therein mentioned, and shall be raised (*d*) in like manner as if the same were required by the said vestry or board for defraying the expenses of such vestry or board in the execution of their powers and duties under this Act in relation to the sewerage of their parish or district.

Provision for assessing and levying rates in places where there is no poor rate (*e*).

CLXXV. The sums which may be assessed from time to time upon any place mentioned in schedule (C.) to this Act, or such part thereof as may not be comprised within any parish, or the city of London, shall be raised by means of a rate to be made and levied as herein provided; that is to say, the said metropolitan board shall from time to time, by warrant under their seal, appoint

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(continued by the 14 & 15 Vict. c. 91,) s. 168, *et seq.* They are applicable to the purposes of constructing, altering, repairing and cleansing the sewers of the city. These must now mean sewers other than those enumerated in schedule (D.) to this Act.

(*d*) See sect. 9 of 25 & 26 Vict. c. 102, *post*, authorizing vestries and district boards to pay precepts out of monies in their possession, and sect. 10 making it lawful for vestries to include in sewers rates sums they may consider necessary to meet precepts received or to be received, and to make separate rates for metropolis main drainage to meet precepts received or to be received.

(*e*) This and the following sections, down to sect. 179 inclusive, are virtually repealed by the 12th section of the 25 & 26 Vict. c. 102, providing for the assessments on these places, and the issuing of precepts to the bodies having control or authority in them. See the 20 Vict. c. 19, declaring that extra-parochial places shall be deemed parishes for the purposes of the poor and other rates.

a proper person to be an assessor, for the purpose of assessing the full and fair annual value of all property in every such place, or such part thereof as aforesaid, which, if the same were not extra-parochial, would be liable to be rated to the relief of the poor, and rating the same to a rate to be levied under this Act; and such assessor shall, within forty days after the delivery to him of the warrant of his appointment, make, sign, and return to the said board an assessment for the place named in such warrant; and the assessment shall be fairly written in a book, and shall specify, in different columns, the names of the respective inhabitants or occupiers of all messuages, lands, tenements, and hereditaments, the full and fair annual value of the same, and the amount of rate charged on the inhabitants or occupiers thereof, and when the premises are unoccupied, the full and fair annual value thereof to let; and every such assessor shall be allowed for his trouble and expenses such remuneration as the said board may think fit; and the same shall be paid out of the amount of the rate which shall be collected after such assessment; and the said rate to be levied as aforesaid shall, for the purposes of the provisions of this Act relating to exemption from and reduction or allowance in respect of sewers rate, and relating to deduction and repayment of sums paid on account of sewers rate, be deemed a sewers rate.

Mode of making the assessment.

Allowance to assessors.

Places in schedule (C.) not now under rating for sewers not to be rated except for intercepting sewers.

CLXXVI. Provided always, that the places mentioned in schedule (C.) to this Act which are not now under rating for sewers shall not be liable to be rated under this Act, except for the purpose of their contributing to the expense of carrying into effect any plan for preventing the sewage of the metropolis from flowing into the river Thames in or near the metropolis, so far as such places respectively shall be benefited.

When assessment is made, notice thereof to be

CLXXVII. When such assessment has been allowed by the said board, public notice of such assessment, and of the place where the same may be inspected, shall be

given by fixing such notice on the door of the church or chapel or some other conspicuous part of the place to which such assessment relates, upon the Sunday next or next but one after the same has been so allowed; and any person in whose custody such assessment may be shall permit every inhabitant or owner or occupier of property included in such assessment to inspect the same, and to make any extracts therefrom, without payment of any fee or reward; and if such person wilfully neglect or refuse to permit any such inhabitant, owner, or occupier to inspect such assessment or to make any extract therefrom, he shall, on conviction thereof before any two justices of the peace, forfeit for every such offence such sum, not exceeding 5*l.*, as the justices think meet.

given, and all persons included in the assessment to have liberty to inspect it, &c.

Penalty for refusing inspection.

CLXXVIII. The said board shall from time to time nominate one or more person or persons for levying the amount of rate charged in every such assessment, who shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and be subject to the same regulations and penalties, with reference to the levying of such rate, as if he or they were an overseer or overseers of the poor in a place rated to the relief of the poor, and shall pay over the amount of such rate to the treasurer of the said board or otherwise as the said board may direct, or in default thereof shall be proceeded against in the same manner as overseers are by this Act to be proceeded against for nonpayment.

As to the collection of the rate charged in such assessment.

CLXXIX. Provided always, that if any person who has paid the amount of rate charged upon him by the assessment made by an assessor appointed under this Act think himself aggrieved by such assessment, on the ground that such assessment includes property for which he is not rateable under this Act, or that it assesses his rateable property beyond its full and fair annual value, or that any person is omitted out of such assessment, or that the property of any person is assessed below its full

Appeal against assessment.

and fair annual value, the person so aggrieved may appeal to the next court of general or quarter sessions for the county or franchise in which the cause of appeal arises, not less than twenty-one days after public notice of such assessment has been given as hereinbefore mentioned; provided that the person so intending to appeal shall give to the said board a notice in writing of such appeal, and of the cause and matter thereof, ten clear days at the least before such sessions, and shall also, within three days after his notice of appeal, enter into a recognizance before some justice of the peace of the county or franchise, with two sufficient sureties, conditioned to try such appeal at the said sessions, and to abide the order of the court thereupon, and to pay such costs as shall be by the court awarded; and in case such person appeal on the ground that any person is omitted out of the assessment, or that the property of any person is assessed below its full and fair annual value, the party so appealing shall not only give such notice of appeal to the said board, and enter into such recognizance as aforesaid, but shall also give a like notice of appeal to the person so interested in the event of such appeal as aforesaid; and the person so interested shall, if he desire it, be heard upon the appeal; and the justices of the peace at such sessions or some adjournment thereof, upon due proof of the notice having been given, and of the recognizance having been entered into as aforesaid, shall hear and determine the matter of the appeal in a summary manner, and shall make such order therein, with or without costs to either party, as the said justices think proper; and in case the said justices think the appellant entitled to relief, they shall order the assessment to be amended in such manner as may be necessary for giving him relief, and shall also order any money paid by him which he was not liable to pay to be returned to him; and in case he have appealed on the ground that any person is omitted out of the assessment, the said justices may order the name of such person to be inserted in the assessment, and to be therein rated at such amount as

The assessment may be altered to relieve the appellant without altering any other part of it.

they deem just; and in case the appellant have appealed on the ground that the property of any person is assessed below its full and fair annual value, the said justices may order the amount at which such person is rated in the assessment to be altered in such manner as they deem just; and the proper officer of the court shall in each of the cases aforesaid forthwith amend the assessment accordingly, but the assessment shall not be quashed or altered with respect to any other persons named therein; and the determination of the justices at any such sessions or adjournment shall be final and conclusive.

Provisions for discharging existing Liabilities of Boards or Bodies having Powers of paving, &c., and of the Metropolitan Commissioners of Sewers.

Provision for discharging existing liabilities under local Acts relating to paving, &c. (*a*).

CLXXX. All debts and liabilities legally charged upon or payable out of any rates or assessments authorized to be levied or made under any Act relating to the paving, lighting, watering, cleansing, or improving of any parish in either of the schedules (A.) and (B.) to this Act, or any part of any such parish, shall be charged upon the rates (other than those to be raised for defraying expenses of sewerage, and (where separate rates are made under this Act for defraying expenses of lighting) expenses of lighting,) to be raised under this Act in such parish or part, and the several district boards and vestries shall cause the sums necessary for discharging such debts and liabilities to be raised in their respective districts and parishes accordingly; and such boards and vestries shall once in every year set aside, out of the rates charged under this Act with such debts and liabilities, such sum as they think proper, not being less than

(*a*) See 25 & 26 Vict. c. 102, s. 79, *post*, authorizing, under special circumstances, sums advanced after the passing of the Act for paving part of the Bedford estate in St. Pancras to be added to debt.

such per-centage as hereinafter mentioned; that is to say, three pounds per centum where the amount of principal debt (exclusive of annuities) does not exceed one fourth of the rateable value of the property rateable for payment thereof, and in other cases two pounds per centum on the amount of the principal debt (exclusive of annuities), for the purpose of paying off such principal, except where the interest only of such debt is charged upon such rates or assessments as aforesaid, and except also where any such debt was contracted under the authority of a local Act, and the local Act did not require that the principal of such debt should be paid off within a limited time; and the sums so from time to time set aside, and all monies applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal as aforesaid, in manner by this Act provided with respect to sums set aside for the purpose of providing a fund for paying off mortgages granted under this Act: Provided always, that where any debts or liabilities are charged on any rates or assessments not wholly levied or made in or upon any one parish mentioned in schedule (A.) to this Act, or any one district mentioned in schedule (B.) to this Act, the metropolitan board of works shall apportion such debts and liabilities between the respective parishes and districts in or upon which such rates or assessments are authorized to be levied or made, and shall certify to the district board and vestry respectively of every such district and parish the amount of the apportioned part of such debts and liabilities to be discharged by rates to be raised in such parish or district, or any part thereof, under this Act, and such apportioned part shall be discharged accordingly (*b*): Provided also, that nothing in this enactment shall affect the right of any creditor to require payment of any such debt as

(*b*) See note (*g*), p. 63, *ante*, as to apportionments made by metropolitan board under this and the 93rd section.

aforesaid within any less time than is prescribed by this enactment for the payment thereof.

Provision for payment of liabilities of metropolitan commissioners of sewers.

CLXXXI. Notwithstanding the determination or expiration of the said Act of the eleventh and twelfth years of her Majesty, chapter one hundred and twelve, all mortgages, annuities, securities, and other debts and liabilities which at or immediately before such determination or expiration may be a charge on or payable out of all or any of the rates authorized to be levied thereunder shall continue in full force, and be a charge on the districts or parts (*c*) in which such rates would have been authorized to be levied in case such Act had continued in force, and all persons who may be entitled to any such mortgages, annuities, or debts shall have priority in respect of all monies advanced before the passing of this Act over any monies advanced to the metropolitan board of works under this Act, and shall have the like priority (*d*) among themselves as they are now entitled to under the said Act of the eleventh and twelfth years of her Majesty, chapter one hundred and twelve, or any Act continuing or amending the same; and the sums from time to time becoming payable under or required for payment of the said mortgages, annuities, securities, debts, and liabilities shall be raised by the metropolitan board of works in such districts or parts in like manner as the expenses of such board in the execution of this Act; and in case any such district or part be

(*c*) See the limits included within the metropolitan commission of sewers, s. 145, note, (*e*) *ante*. The 25 & 26 Vict. c. 102, s. 2, *post*, redistributes the debt in respect of certain works of sewerage, and makes it payable out of monies borrowed on the security of the main drainage rate; and see sect. 3 of the same Act, and schedule specifying the securities, &c., on which the debt on the loan from the Clergy Mutual Insurance Society shall stand charged, and note to that section. See also sect. 4, saving rights and remedies of persons holding securities.

(*d*) As to these priorities, see note (*e*) to sect. 4 of 25 & 26 Vict. c. 102, *post*.

wholly or in part without the limits of the metropolis, as defined by this Act, the said metropolitan board shall from time to time issue precepts under their seal to the overseers (*e*) of the parish or parishes in which any part without such limits is comprised, requiring payment to the treasurer of the said board or into any bank in such precepts respectively mentioned, within such respective times as may be therein limited, of such sums as it may be necessary to raise in such part for the purposes aforesaid; and the provisions herein contained respecting the levying and payment of money by overseers in pursuance of any order of a vestry or district board shall be applicable, *mutatis mutandis*, to and for the levying and payment of money by overseers in pursuance of any such precept as aforesaid of the said metropolitan board (*f*); and the said board shall once in every year set aside such sum as they think proper, not being less than two pounds per centum on the amount of all principal monies (exclusive of annuities) becoming payable by them under this enactment, for the purpose of paying off all such principal monies; and the sums so from time to time set aside, and all monies applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal monies as aforesaid, in manner by this Act provided (*g*) with respect to sums set aside for the purpose of providing a fund for paying off mortgages granted under this Act, and the sums to be so set aside shall be raised by such board in manner aforesaid.

Where metropolitan

CLXXXII. Where the metropolitan commissioners of

(*e*) See definition of word "overseer," sect. 250; and see enactment for recovery of monies assessed by metropolitan board on extra-parochial and other property for payment of debts not otherwise provided for, 25 & 26 Vict. c. 102, s. 17, *post*.

(*f*) Those provisions are contained in the 161st and following sections; and see the sect. 168, empowering the board to appoint persons to levy on default.

(*g*) See ss. 190, 191.

sewers have incurred any expenses authorized by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to be paid by an improvement rate, or as charges for default (*h*), it shall be lawful for the metropolitan board of works (*i*) to levy improvement rates or charges for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act, and the said board shall have all the rights and remedies for the recovery thereof which are now vested in the metropolitan commissioners of sewers in this behalf.

commissioners of sewers have incurred expenses to be paid by improvement rates, &c. the metropolitan board may levy such rates as remain due.

General Powers to Metropolitan and District Boards and Vestries to borrow.

CLXXXIII. It shall be lawful for the metropolitan board and every district board and vestry, for the purposes of defraying any expenses incurred or to be incurred by them in the execution of this Act (*l*), to borrow

Power to boards and vestries to borrow money on mortgage(*k*).

(*h*) The chief provisions relating to improvement rates and charges for default were contained in 11 & 12 Vict. c. 112, ss. 46, 48, 49, 50, 54, 82; 12 & 13 Vict. c. 93, s. 11, and 18 Vict. c. 30, s. 30.

(*i*) The 11 & 12 Vict. c. 112, ss. 132, 141, empowered the commissioners to raise these sums by distress and sale. The powers of the board for the recovery of these rates and charges are now to be exercised by the appeal committee. See 25 & 26 Vict. c. 102, s. 30, *post*.

(*k*) By the 21 & 22 Vict. c. 104, s. 4, *et seq.*, the metropolitan board are empowered, with the consent of the commissioners of the treasury, to raise the sum of three million pounds for the works of main drainage to be executed under that Act, and the commissioners of the treasury are authorized to guarantee the payment of the principal and interest, and issue sums required for payment out of the consolidated fund. The 25 & 26 Vict. c. 102, s. 19, *post*, provides that any party lending money shall not be bound to inquire into the application of the money borrowed, or the regularity of the proceedings.

(*l*) By sect. 72 of 25 & 26 Vict. c. 102, *post*, vestries and district boards are empowered to borrow money for improvements within their parish or district.

and take up at interest, on the credit of all or any of the monies or rates (*e*) authorized to be raised by them under this Act, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such board or vestry may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective monies or rates upon the credit of which such sums are borrowed; and the respective mortgagees shall be entitled to a proportion of the monies or rates comprised in their respective mortgages, according to the sums in such mortgages mentioned to have been advanced; and each mortgagee shall be entitled to be repaid the sums so advanced, with interest, without any preference over any other mortgagee or mortgagees by reason of any priority of advance or the date of his mortgage: Pro-

No priority amongst mortgagees.

(*e*) This appears to confer a power to mortgage *all* the rates for *any* of the purposes of the Act, and not to render it necessary that the security should be confined to those rates which are specially applicable to the particular class of expenditure, such as the sewers rate for sewers, the general rate for paving, &c. That seems to result from the general terms of the enactment which, moreover, omits the restrictions which were contained in the 107th section of the Public Health Act (11 & 12 Vict. c. 63), making it incumbent upon local boards, so far as practicable, to borrow on the credit of particular rates, a provision which was found inconvenient in practice, and has since been repealed and replaced by the provisions contained in the 57th sect. of the Local Government Act, 21 & 22 Vict. c. 98. The question is not of much importance as regards monies borrowed by the metropolitan board for their general purposes, as their assessments are paid out of the sewers rate. But it does involve some material considerations with respect to the monies borrowed by vestries and district boards. The regulation embodied in the last cited provision of the Local Government Act, prohibiting borrowing except for permanent works, and imposing other conditions, seem to furnish a safe rule of guidance for the vestries and district boards of the metropolis, and they are also substantially in accordance with the terms of the sanction usually granted by the metropolitan board under this section.

vided always, that no monies shall be so borrowed by any district board or vestry without the previous sanction in writing of the said metropolitan board.

Power to commissioners acting under 14 & 15 Vict. c. 28, to make advances (*f*).

CLXXXIV. It shall be lawful for the commissioners acting in the execution of an Act passed in the session holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, "to authorize for a further period the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts for amending or continuing the same, to make advances to any such board or vestry upon the security of all or any of the monies or rates to be raised by them under this Act, and without requiring any further or other security than a mortgage of such monies or rates.

Form of mortgage.

CLXXXV. Every mortgage authorized to be made under this Act shall be by deed duly stamped, truly stating the date, consideration, and the time of payment, and shall be sealed (*g*) with the seal of the board or vestry, and may be made according to the form (E.) contained in the schedule to this Act annexed, or to the like effect, or with such variations or additions in each case as the board or vestry and the party advancing the money intended to be thereby secured may agree to; and there shall be kept at the office of the board or vestry a register of the mortgages made by them, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and descriptions of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office

Register of mortgages.

(*f*) See sect. 20 of 25 & 26 Vict. c. 102, *post*, empowering public loan commissioners to lend to metropolitan boards, vestries, &c., and as to repayment by instalments.

(*g*) The common seal affixed pursuant to order or resolution is declared to be binding, and conclusive on the board or vestry; s. 19 of 25 & 26 Vict. c. 102, *post*.

hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding 5*l.*

Repayment of money borrowed at a time agreed upon.

CLXXXVI. The board or vestry making any such mortgage may, if they think proper, fix a time or times for the repayment of all or any principal monies borrowed under this Act, and the payment of the interest thereof respectively, and may provide for the repayment of such monies, with interest, by instalments or otherwise, as they may think fit; and in case the board or vestry fix the time or times of repayment they shall cause such time or times to be inserted in the mortgage deed; and at the time or times so fixed for payment thereof such principal monies and interest respectively shall, on demand, be paid to the party entitled to receive the same accordingly; and if no other place of payment be inserted in the mortgage deed, the principal and interest shall be payable at the principal office of the board or vestry, and, unless otherwise provided by any mortgage, the interest of the money borrowed thereupon shall be paid half-yearly; and if no time be fixed in the mortgage deed for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the board or vestry may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee shall be given in manner herein provided for service of notices (*h*) on the board or vestry, and if given by the board or vestry shall be given either personally to such mort-

Interest on mortgages to be paid half-yearly.

As to repayment of money borrowed when no time has been agreed upon.

(*h*) The mode of serving notices on boards and vestries is provided for by sect. 220.

gagee or left at his residence, or if such mortgagee or his residence be unknown to them, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette; and if the board or vestry have given notice of their intention to pay off any such mortgage at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the board or vestry fail to pay the principal and interest due at the expiration of such notice on such mortgage.

Interest to cease on expiration of notice to pay off a mortgage debt.

CLXXXVII. It shall be lawful for the said metropolitan board, with respect to any security granted by the metropolitan commissioners of sewers, or granted by such board under this Act, and for every district board and vestry, with respect to any security for any existing debt or liability which such board or vestry are by this Act required to discharge, and any security granted by such board or vestry under this Act, to raise and borrow the monies necessary for paying off such security, and to pay off the same; and the monies borrowed for the purpose of such payment shall be secured and repaid in like manner as if borrowed for defraying the expenses of the execution of this Act: Provided always, that nothing herein contained shall extend to authorize the paying off of any security otherwise than in accordance with the provisions thereof.

Power to borrow to pay off existing securities.

CLXXXVIII. If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage made under this Act, or under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve,

Payment of principal and interest may be enforced by the appointment of a receiver (i).

(i) This does not empower the receiver to *make*, but only to *collect and receive* rates already made, and in case the board or vestry should refuse to make the rate it would still

or any Act continuing or amending the same, and after demand in writing, the same be not paid, the mortgagee may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are hereby empowered, after hearing the parties, to appoint, in writing under their hands and seals, some person to collect and receive the whole or a competent part of the monies or rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid; and upon such appointment being made all such monies or rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees, and shall be rateably apportioned between or among them, but subject and without prejudice to such rights of priority (*k*), if any, as shall then be subsisting between the mortgagees or any of them (*l*): Provided always, that no mortgagee shall be prejudiced, either directly or indirectly, by any loss which may be occasioned by the misapplication or non-application of any monies or rates received by any receiver appointed otherwise than upon the application or with the express consent of such mortgagee, or by any act, deed, neglect, or default on the part of such receiver, but such loss shall be wholly borne by the mortgagee or mortgagees

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be necessary to resort to a *mandamus*. See a declaration in an action against a local board of health, claiming a writ of *mandamus* commanding them to make and levy a rate for the payment of a debt; *Ward* v. *Lowndes*, 28 L. J. (N. S.) Q. B. 265.

(*k*) This can only apply to securities granted by former commissioners, &c., as there can be no priority among mortgagees under this Act. See sect. 183.

(*l*) This proviso was not contained in the section of the 11 & 12 Vict. c. 112, from which it is borrowed. These words were first inserted in one of the mortgages granted by the metropolitan commissioners of sewers.

upon whose application or with whose express consent such receiver was appointed: Provided also, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two or more mortgagees to whom there may be due, after such lapse of time, and demand, as last aforesaid, monies collectively amounting to that sum.

Transfer of mortgages.

CLXXXIX. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date, the names and descriptions of the parties thereto, and the consideration for the transfer; and such transfer may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect; and there shall be kept at the office of every board and vestry making any mortgages under this Act a register of the transfers of such mortgages; and within thirty days after the date of any such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk of the board or vestry making the mortgage; and such clerk shall, upon payment of the sum of 5*s*., cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and upon any transfer being so registered, the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby; and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person, except the person to whom the same has been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby.

Register of transfers.

Sinking fund to be formed

CXC. For the purpose of providing a fund for paying

for paying off mortgages.

off mortgages granted under this Act, the board or vestry granting such mortgage shall once in every year set aside, out of the monies or rates charged thereby, such sum as they think proper, being not less than 2*l.* per centum on the amount of the principal monies secured thereby; and the sum so from time to time set aside, and all other monies applied by the board or vestry in augmentation of the said fund, shall be applied, in the manner hereinafter directed, in payment, so far as the same will extend, of the principal money secured by such mortgages, or the same shall be invested in the public funds, or on government or real security, in the name of the board or vestry; and the dividends and interest of the monies so invested, when and as the same become due, shall from time to time be received and invested in like manner, in order that the said monies so set aside and invested may accumulate at compound interest; and when such accumulated fund amounts to a sum which, in the opinion of the board or vestry, can be conveniently applied for that purpose, the stocks, funds, or securities whereon the same is invested shall be sold, or otherwise converted into money, and the monies arising from any such sale and conversion shall be applied in the manner hereinafter directed, in payment, so far as the same will extend, of the said principal monies, and so from time to time until the whole of the said principal monies are discharged.

Mode of paying off mortgages (*a*).

CXCI. When and as often as the board or vestry are enabled and think it expedient to pay off one or more of the said mortgages, they shall cause the several numbers of such mortgages to be written upon distinct slips of paper of an equal size, and all such slips shall be rolled or folded up in a similar form, and put in a box, and the clerk of the said board or vestry shall, at a meeting of

(*a*) This mode of paying off mortgages by ballot seems inconsistent with the provision contained in s. 186, *ante*, as to repayment of securities at times fixed by the deed, and where no time is fixed after twelve months from its date, on giving six months' notice.

the board or vestry, draw separately out of the said box one of the said slips, and thereupon the mortgage corresponding with the number so drawn shall be paid off by the board or vestry; and after every such ballot the board or vestry shall cause a notice, signed by the clerk, to be given to the person entitled to the money to be paid off, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified in such notice, at the expiration of six months from the date of giving such notice; and at the expiration of such period the interest of the principal money to be paid off shall cease, unless such principal money and interest be not paid, on demand, pursuant to such notice; but such principal money, and the interest thereof to the end of the said six months, shall nevertheless be payable, on demand.

Audit of Accounts.

Accounts of metropolitan board, district boards, and vestries to be balanced up to the end of each year.

CXCII. The metropolitan board of works, every district board, and the vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act, shall, in the month of April in every year, cause their accounts to be balanced up to the twenty-fifth day of March next preceding, and shall cause a full statement and account to be drawn out of the amount of all contracts entered into and of all monies received and expended by them during the preceding year, under the several distinct heads of receipt and expenditure, and also of all arrears of rates and other monies then owing to such respective board or vestry, and of all mortgages and other debts and liabilities then owing by such board or vestry: Provided always, that where by reason of the time established by or under any local Act for making and collecting rates in any parish the time hereby fixed for making up the accounts is inconvenient, it shall be lawful for the metropolitan board of works to order that the time of making and collecting such rates, and the

period for which any such rate may be made, shall be altered as to the said board may appear convenient.

Auditor of accounts of metropolitan board to be appointed by secretary of state, and remunerated by the board.

CXCIII. One of Her Majesty's principal secretaries of state shall, in the month of April in every year, by order under his hand, appoint some fit person to be the auditor of the accounts of the said metropolitan board for the preceding year; and every such auditor shall be paid by such board not exceeding five guineas for every day he is fully employed on such audit, and all expenses he is put to in the auditing of such accounts; provided always, that such payment shall not exceed fifty guineas (*b*).

Auditors to be elected annually by the district boards.

CXCIV. Every district board shall, in the month of April in every year, elect by ballot from among the persons acting as auditors for the parishes in the district three persons, not being members of such board, to be auditors for the current year of the accounts of such board; and in case of the death of any such auditor, the board by whom he was elected shall forthwith elect in a similar manner some other such person as aforesaid in his place, and the powers hereby given to the said auditors may be exercised by any two of them.

As to the audit of accounts.

CXCV. The auditor of the accounts of the said metropolitan board, and the auditors of the accounts of every district board and every such vestry as aforesaid, shall, in the month of May, on such day or days as shall be fixed by him or them for the audit of such respective accounts, attend at the office or principal office of the metropolitan board of works, or of such district board or vestry (as the case may require), for the purpose of auditing their accounts; and such respective

(*b*) So much of this section as relates to the payment of the auditor is repealed by the 25 & 26 Vict. c. 102, s. 114, *post*, which directs that he shall be paid five guineas per day and his expenses, but so that such payments shall not exceed one hundred guineas.

boards and every such vestry shall, by their clerks, treasurers, and other officers, produce and lay before such auditor or auditors at every such audit their accounts for the year preceding, together with the statement and account hereinbefore mentioned, accompanied by proper vouchers for the support of the same, and submit to his or their inspection all books, papers, instruments, and writings in their custody or control relating thereto (*c*); and such auditor or auditors, in the presence of such of the members of such respective boards or vestries and of the ratepayers and creditors on the rates as desire to attend, shall audit the accounts hereinbefore mentioned, and may examine any of the members of such respective boards or vestries or their officers whom he or they shall deem accountable (and whom he and they is and are hereby empowered to summon, by writing under his or their hand or hands, or under the hand of any one of them, to appear before him or them for the purpose of such examination,) touching the said accounts, and shall also hear any complaint which any such ratepayer or creditor shall at the time of such audit make touching such accounts; and such auditor or auditors shall have full power to examine, audit, allow, and disallow (*d*) the said accounts and items therein, and shall charge in such accounts all sums (if any) which ought to be accounted for, and are not brought into account; and if such accounts be found correct, such auditor or auditors, or the major part of them, shall sign the same in token of his or their allowance thereof, and such allowance shall be final and conclusive on all parties (*e*).

(*c*) A *mandamus* calling on justices to produce "the accounts" (without limit as to time) held bad; *R.* v. *Church Trustees of St. Pancras*, 6 Ad. & E. 314.

(*d*) This enactment contains no provision for recovering the sums disallowed.

(*e*) The provision making the allowance of the auditor final and conclusive is impliedly repealed, as to the accounts of vestries and district boards, by the 38th sect. of the 25 & 26 Vict. c. 102, *post*, enabling the allowance, disallowance, or surcharge of the accounts of those bodies to be recovered by *certiorari*.

Abstract of accounts to be made.

CXCVI. The auditor or auditors of the accounts of the metropolitan board of works, and of every district board and vestry, shall, after such audit of accounts as aforesaid, cause an account in abstract to be prepared, showing the receipt and expenditure under this Act for the preceding year, under the several distinct heads of receipt and expenditure, with the statement of the allowance of the auditor or auditors, if he or they has or have allowed such accounts, or of the parts, if any, which he or they have disallowed of such accounts, and also a summary statement of all contracts entered into by such board or vestry in such preceding year, and of the monies owing to and debts and liabilities owing by such board or vestry on the 25th day of March next preceding.

Accounts of other parochial boards to be audited by the auditors elected under this Act.

CXCVII. In all parishes mentioned in the schedules (A.) and (B.) to this Act, in which other boards have control over any part of the parochial expenditure, the auditors of accounts of the parish elected under this Act shall have the same power of examining the accounts and officers of the said boards as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the vestry, and the accounts of the said boards shall not be subject to any other audit: Provided always, that nothing herein contained shall apply to accounts which if this Act had not been passed would have been subject to the audit of any auditor already or hereafter appointed under the authority of the Act of the session holden in the fourth and fifth years of King William the Fourth, chapter seventy-six, or any Act incorporated therewith (*f*).

(*f*) This proviso is not repealed by the 3rd sect. of the 19 & 20 Vict. c. 112, *post*, and the power to order the appointment of an auditor remains in the poor law commissioners; *R.* v. *Directors of the Poor of St. Pancras*, 27 L. J. (N. S.) M. C. 281. See also *R.* v. *Governors, &c. of the Poor of St. James's, Westminster*, 28 L. J. (N. S.) M. C. 172, affirmed in error, 29 L. J. (N. S.) M. C. 4.

Annual Reports.

CXCVIII. Every such vestry as aforesaid and district board shall, in the month of June in every year, cause to be printed the said account in abstract and summary statement for the preceding year, relating to such vestry or board, and also make and cause to be printed therewith a report of their proceedings in the execution of this Act, and of the works commenced and completed respectively in the preceding year by such vestry or board, and the works remaining in progress at the termination of such year, and also of any proceedings taken by them or under their authority in the preceding year, in pursuance of any regulations of the general board of health for the time being in force, or otherwise, for the removal of nuisances or the improvement of the sanitary condition of their parish or district; and to every such report there shall be appended a copy of every report made to such vestry or board during the preceding year by the officer or officers of health for their parish or district (*g*); and every such vestry and board shall in the said month of June send a copy of every such account in abstract, statement, and report, together with a printed list of the names and addresses of the members of such vestry and board, and of their officers, to the metropolitan board of works; and every vestry and district board shall permit inspection at their office of a copy of any such account in abstract, statement, and report by any ratepayer in their parish or district, without payment, at all reasonable times, and shall also permit the like inspection by the public generally of such

Annual reports by vestries and district boards.

(*g*) The necessity of appending copies of all the reports by officers of health is now dispensed with, and it will henceforth be sufficient to append to the annual report of the vestry a copy of the annual report of the medical officer. See s. 43 of 25 & 26 Vict. c. 102, *post*.

list of officers; and copies of such account in abstract, statement, and report, and list of officers, shall be delivered to any person applying for the same, on payment of such reasonable sums, not exceeding 2*d.* for each such copy, as may be fixed by such vestry or board in this behalf.

Vestry to make out and publish yearly a list of estates, charities, and bequests, &c. with the application thereof (*h*).

CXCIX. Every such vestry as aforesaid shall cause to be made out once at least in every year a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the parish, and under the control of the vestry, the list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity; and such lists shall be open for the inspection of the ratepayers at the office of the vestry clerk at the same time with the accounts when audited according to the provisions of this Act.

Annual report of metropolitan board of works.

CC. The metropolitan board of works shall, in the month of June in every year, make a report of their proceedings in the execution of this Act, and shall in the said month send a copy thereof, together with a copy of the said account in abstract and summary statement for the preceding year relating to such board, to one of Her Majesty's principal secretaries of state, to

(*h*) See 18 & 19 Vict. c. 124, s. 44, requiring the trustees of parochial charities to deliver a copy of the accounts to the churchwardens of the parishes.

the commissioners of Her Majesty's works and public buildings, to the general board of health, to the lord mayor of the city of London, and to each of the vestries and district boards in the other parts of the metropolis.

Reports, &c. of metropolitan board to be laid before parliament.

CCI. Every such report, account in abstract, and statement to be sent to one of Her Majesty's principal secretaries of state as aforesaid shall be laid before both houses of parliament within one month after the receipt thereof if parliament be sitting, or if parliament be not sitting, then within one month after the next meeting of parliament.

Byelaws.

Power to metropolitan board of works to make byelaws.

CCII. The metropolitan board of works and every district board and vestry respectively may from time to time make, alter, and repeal byelaws for all or any of the purposes following; (that is to say,) for regulating the business and proceedings at their meetings and of committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct, and remuneration of such officers and servants; and the said metropolitan board may also from time to time make, alter, and repeal byelaws (*i*) for regulating the plans, level, width, surface inclination, and the material of the pavement and roadway of new streets and

(*i*) Under this power the board have promulgated certain byelaws relative to the construction of new sewers and communications with main and other sewers; but inasmuch as the 25 & 26 Vict. c. 102, s. 83, *post*, empowers the metropolitan board to make byelaws for the guidance, direction, and conduct of vestries, &c. in relation to the works, dimensions, construction, &c. of sewers and for the other objects enumerated in the 138th sect. of this Act, and the Act itself contains several substantive provisions on the subjects to which the existing byelaws relate, it will become necessary that these should immediately be revised.

roads (*a*), and the plans and level of sites for building (*b*), and for regulating the dimensions, form, and mode of construction, and the keeping, cleansing, and repairing, of the pipes, drains, and other means of communicating with sewers, and the traps and apparatus connected therewith (*a*); for the emptying, cleansing, closing, and filling up of cesspools and privies; and for other works of cleansing, and of removing and disposing of refuse, and for regulating the form of appeal and mode of proceeding thereon; and generally for carrying into effect the purposes of this Act; and every such board and vestry may thereby impose such reasonable penalties (*c*) as they think fit, not exceeding 40*s.*, for each breach of such byelaws, and in case of a continuing offence a further penalty not exceeding 20*s.* for each day after notice of the offence from the board of vestry: Provided always, that under every such byelaw it shall be lawful for the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty: Provided also, that no byelaws shall be repugnant to the laws of England or to the provisions of this Act; and that no byelaw shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: Provided also that no penalty shall be imposed by any such byelaw unless the same be approved by one of Her Majesty's principal secretaries of state (*d*).

Penalty for breach of byelaws.

Power of justices to remit penalties.

(*a*) See 25 & 26 Vict. c. 102, s. 98, *post*, as to the width of existing roads hereafter formed or laid out for building as streets. This Act, the 18 & 19 Vict. c. 120, contains no enactment with respect to the width, &c., of streets, which is regulated by a byelaw of the metropolitan board. The repealed Building Act, the 7 & 8 Vict. c. 84, contained such a provision. See schedule I to that Act, containing rules concerning streets and alleys.

(*b*) See the 25 & 26 Vict. c. 102, s. 85, *post*, restricting the height of buildings in certain situations.

(*c*) See s. 227, as to the recovery of these penalties.

(*d*) This approval does not render a byelaw *ultra vires* valid; *R.* v. *Wooding*, 5 E. & B. 49.

CCIII. All byelaws made and confirmed as aforesaid in pursuance of this Act shall be printed, and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies thereof shall be delivered to any person applying for the same, on payment of such sum, not exceeding 2*d.*, as the board or vestry shall direct; and such byelaws, when so published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same; and the production of a printed copy of such byelaws, authenticated by the seal of the board or vestry, shall be evidence of the existence, and of the due making, confirmation, and publication (*e*) of such byelaws, in all prosecutions under the same, without adducing proof of such seal or of the fact of such confirmation or publication of such byelaws. Publication of byelaws. Evidence of byelaws.

Provisions for Protection of Property and Works of Metropolitan and District Boards and Vestries, and preventing Obstruction in Execution of Works.

CCIV. No building shall be erected in, over, or under any sewer (*f*) vested in the metropolitan board of works, Buildings not to be made over sewers

(*e*) This is not in terms made evidence of the approval of the secretary of state, but the word "confirmation" was possibly meant to include every requirement down to publication. The intention of the enactment would be entirely frustrated if it became necessary in every instance to produce the original byelaws and prove the secretary of state's signature.

(*f*) The marsh-wall or embankment keeping back the river Thames at high water from inundating the Isle of Dogs, and through which sewers pass to drain the isle at low water, was held to be "a sewer" within the meaning of this section; *Poplar District Board of Works* v. *Knight and another*, 28 L. J. (N. S.) M. C. 37, per Lord Campbell, C. J., and Erle, J., Crompton, J., doubting. A question was also raised in that case as to whether the marsh-wall was vested in the district board under sect. 68, or in the metropolitan board under sect. 135, but there seems no reason to doubt that it is vested in the former, nor is it probable that it could be successfully contended that the embankment

without consent.

or in any vestry or district board, without their consent first obtained in writing, and if any building be erected contrary to this provision the board or vestry in whom such sewer is vested may demolish the same, and the expenses incurred thereby shall be paid by the person erecting such building.

Penalty on persons sweeping dirt into sewers (*g*).

CCV. No scavenger or other person shall sweep, rake, or place any soil, rubbish, or filth, or any other thing, into or in any sewer or drain, or over any grate communicating with any sewer or drain, or into any dock or inlet communicating with the mouth of any sewer or drain, or into which any sewer or drain may discharge its contents, or into the river Thames contiguous thereto; and every scavenger or other person who shall so offend shall for every such offence forfeit and pay any sum not exceeding 5*l.*

Penalty for wilfully damaging, &c., lamps or other property of vestries or district boards, or of the metropolitan board (*h*).

CCVI. If any person wilfully take away, break, throw down, or damage any lamp set up for lighting any of the streets in any parish mentioned in either of the schedules (A.) and (B.) to this Act, or wilfully extinguish the light within the same, or damage the iron or other furniture thereof, or wilfully damage any other property vested in any vestry or district board, or any property vested in the said metropolitan board, it shall be lawful

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formed part of the Great Sluice and Drunken Dock Sluice mentioned in schedule (D.), enumerating the sewers vested in the metropolitan board. See sects. 68 and 69 of 25 & 26 Vict. c. 102, *post*, giving extended powers to the metropolitan board and vestries and district boards in cases of unauthorized interference with sewers, banks, defences, &c.

(*g*) The 2 & 3 Vict. c. 47 (Metropolitan Police), s. 60, imposes a penalty of 40*s.* on every person who throws or lays any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throws or causes any such thing to fall into any sewer, pipe, or drain; and see 57 Geo. 3, c. 29, s. 62, *post*, Appendix.

(*h*) See s. 99 of 25 & 26 Vict. c. 102, *post*, as to penalties for defacing posts, buildings, &c., of vestries and district boards, defacing or injuring notice boards, &c.; and sects.

for any person who sees such offence committed to seize, as also for any other person to assist in seizing, the offender, and by authority of this Act, and without any other warrant, to convey him, or to deliver him into the custody of a police officer in order to be secured and conveyed, before some justice; and if the party accused be convicted of such offence he shall forfeit the sum of 40*s.*, and shall also pay to such vestry or board the amount of damage done.

Persons carelessly or accidentally damaging lamps, &c. to make satisfaction.

CCVII. In case any person carelessly or accidentally break, throw down, or damage any such lamp, or the iron or other furniture thereof, or other such property as aforesaid, he shall pay the amount of damage done.

Penalty on interrupting workmen, &c. in execution of duties.

CCVIII. If any person at any time obstruct, hinder, or molest any surveyor, inspector, collector, or other officer, workman, or person whomsoever, employed by virtue of this Act, in the performance or execution of his duty, every such person so offending shall for the first offence forfeit and pay the sum of 5*s.*, for the second offence the sum of 20*s.*, and for any subsequent offence the sum of 5*l.* (*i*).

Penalty upon occupiers obstructing execution of works, or not disclosing owner's name.

CCIX. If the occupier of any premises prevent the owner thereof from carrying into effect, with respect to such premises, any of the provisions of this Act, or any order of any vestry or district board made in pursuance thereof, he shall be liable to a penalty not exceeding 5*l.* for every day during the continuance of such refusal or neglect; and if the occupier of any premises, when requested by or on behalf of the vestry or district board to state the name and description of the owner of the premises occupied by him, refuse or wilfully omit to disclose

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68 and 69 of 25 & 26 Vict. c. 102, as to penalties in case of wrongful interference with sewers; and see sect. 70 as to penalties for wilfully fouling water in, or wilfully damaging drinking fountains.

(*i*) As to recovery of penalty, see sect. 227, *post.*

or wilfully mis-state the same, it shall be lawful for any justice to summon the party to appear before him or some other justice at a time and place to be appointed in such summons; and if the party so summoned neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding 5*l.*

Savings and provisions in local Acts applicable to commissioners of sewers to apply to metropolitan and district boards and vestries.

CCX. All savings and provisions in turnpike, railway, waterworks, improvement, and other Acts, saving and providing for the rights, powers, and authorities of the commissioners of sewers for any of the parts which shall be within the metropolis as defined by this Act, shall, so far as the same are not inconsistent with the provisions of this Act, continue and be in force in favour of and with reference to the metropolitan board of works and the several district boards of works and vestries having the management of sewers under this Act, and in favour of the commissioners of sewers of the city of London, so far as such savings and provisions respectively are now applicable to them, or to any officer or person so continued by the said board.

Appeals.

Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

CCXI. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, watercloset, privy, ashpit, or cesspool (*a*), may, within seven days after

(*a*) The orders of the vestries against which the appeal is given are those made under the 76th and following sections, and under the 143rd sect., now repealed by the 25 & 26 Vict. c. 102, s. 75, containing provisions with respect to buildings

notice of any such order to the occupier of the premises affected thereby, or after such act, appeal (*b*) to the metropolitan board of works against the same; and all such appeals shall stand referred to the committee appointed by such board for hearing appeals as herein provided; and such committee shall hear and determine (*c*) all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation (*d*) in respect of any act done by any such vestry or district board in relation to the matters aforesaid; provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

Metropolitan board to appoint a committee for hearing appeals (*e*).

CCXII. The metropolitan board of works shall appoint a committee for the purpose of hearing all such appeals as may be made to the said board as aforesaid, which committee shall have power to hear and decide all such appeals, and the metropolitan board of

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beyond the general line. Doubts have been expressed as to whether any appeal is given to the metropolitan board against the resolutions and acts of vestries under s. 101, relative to vaults, arches, and cellars under the streets. The metropolitan board do in practice entertain such appeals, and it is presumed they have jurisdiction to do so.

(*b*) The jurisdiction of the court of Chancery to interfere by injunction is not ousted by this appeal clause; *Tinkler* v. *Board of Works for the Wandsworth District*, 27 L. J. (N. S.) Ch. 342.

(*c*) See 25 & 26 Vict. c. 102, s. 29, *post*, empowering appeal committee to vary the order appealed against.

(*d*) See ss. 225, 226, as to recovery of compensation.

(*e*) By 25 & 26 Vict. c. 102, s. 30, *post*, this committee

works shall from time to time fill up any vacancy in such committee, and the chairman of the said board shall, by virtue of his office of chairman, be a member of the said committee in addition to the members appointed by the said board, and shall preside at all meetings of such committee at which he is present; and in case of a vacancy in the office of such chairman, or, in his absence, some other member of the committee shall be chosen to preside, and all the powers of such committee may be exercised by any three of them, and any member of such committee may at any time resign his office.

Retiring Allowances to Officers of Commissioners of Sewers, and Compensations to other Officers.

Power to grant retiring allowances to persons employed under metropolitan commissioners of sewers.

CCXIII. The metropolitan board of works may, if they deem it just, order the payment of retiring pensions or allowances, of such amounts and upon such terms as they deem just, to any officers or persons who have been employed under the metropolitan commissioners of sewers, and who shall not continue to be employed by the metropolitan board of works, or to any officer or person continued by the said board, having regard in the case of persons who have been employed under any of the commissions determined by the issuing of the first commission under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to their employment under any of such commissions, as well as under the said metropolitan commissioners of sewers, and to pay such pensions or allowances out of such monies raised by the said metropolitan board under this Act as to them may seem meet.

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are to have the rights and remedies of the board with respect to improvement rates for expenses incurred under Metropolitan Sewers Acts.

Compensation to officers of paving boards.

CCXIV. Every officer to any commissioners, vestry, or other body whose powers in relation to paving, lighting, watering, cleansing, or improving, or otherwise in relation to the regulation, government, or public concerns of any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, or any part of any of such parishes, are determined by this Act, and any paid surveyor of highways of any of such parishes, shall be entitled within six months after the commencement of this Act to make a claim for compensation in respect of any loss of emoluments arising from the passing of this Act, such claim to be made to the vestry of the parish in case the office of the claimant existed in any parish mentioned in the said schedule (A.), and in other cases to the district board of the district in which the office existed; and it shall be lawful for such vestry or board respectively to inquire, in such manner as they think fit, what were the nature and tenure of the office and the period for which the same has been holden by the claimant, and what were the lawful emoluments in respect of which compensation should be awarded; and the vestry or district board shall award a gross or yearly sum, and, in the case of a yearly sum, for such time as they think just upon consideration of the special circumstances of each case; but no such award shall be final until confirmed by the metropolitan board of works, and one month before any such award is taken into consideration by such board notice of such award shall be given to the party in whose favour the same is made, and such board shall take into consideration any representations which may in the meantime be made to them by the party in whose favour the award is made, and by the vestry or district board making the same, and such further information or representations in relation to the matter of any such award as the said metropolitan board may see fit to require or receive; and such board may confirm such award with or without any alteration therein as to them may seem just; and any person making any such claim to compensation whose

claim is rejected by any vestry or district board may, within one month after notice to him of the rejection thereof, appeal against the determination of such vestry or district board to the metropolitan board of works, and such board shall consider all the circumstances of the case, and may, if it appear to them just, award compensation to the claimant in like manner as the vestry or district board are herein empowered to do; (*f*) and the determination or award of the said metropolitan board in reference to such claim shall be final; and all compensation awarded as aforesaid shall be paid out of the general rates to be levied under this Act in the parish or particular part of any parish to which the office in respect whereof the compensation is awarded related, so as to charge such parish or particular part therewith in exoneration of other parishes and parts: Provided always, that if any person to whom a yearly sum is awarded by way of compensation as aforesaid be appointed to any office or employment under the vestry of any of the said parishes, or under any district board, or the metropolitan board of works, or in the public service, the payment of the compensation so awarded shall be suspended so long as he continues to hold such office or employment if the emoluments thereof be equal to or greater than the amount of the emoluments of the office formerly held by him, and in case the emoluments of the office or employment to which he is appointed be not equal in

(*f*) Where a claimant, whose application had been rejected by a district board, appealed to the metropolitan board, who made an order awarding compensation, which order was brought up by *certiorari* to be quashed, on the ground of a want of jurisdiction, it was held that the question whether the claimant was an officer or not, was necessarily within the appellate jurisdiction of the metropolitan board, and that the *certiorari* had improvidently issued; *R.* v. *Metropolitan Board of Works*, 27 L. J. (N. S.) Q. B. 5. The court also refused a rule for a *mandamus* where the metropolitan board had altogether refused to award any compensation; *R.* v. *Metropolitan Board of Works*, 21 J. P. 69.

amount to those of his former office, then no more of such compensation shall be paid to him than will, with the salary of his new appointment, be equal to the emoluments of his former office.

Miscellaneous Clauses.

Where two or more persons are to do any act or pay any sum of money, vestry or district board may apportion the same.

CCXV. Where, under the authority of this Act, two or more persons are or may be directed by any vestry or district board to do or join in doing any act, or to pay or join in paying any sum of money, costs, or expenses, or where any vestry or district board are authorized or think proper to permit two or more persons to join together in doing any act, or paying any sum of money, costs, or expenses, it shall be lawful for the vestry or district board to apportion the matter to be done, or the sum of money, costs, or expenses to be paid, between such persons, in such manner as the vestry or board consider just and reasonable.

Power to vestries and district boards to spread repayment of expenses over a period not exceeding twenty years.

CCXVI. In all cases where any vestry or district board is authorized to order any costs, charges, or expenses to be paid by private parties it shall be lawful for such vestry or district board to order and accept payment of such costs, charges, expenses, together with interest thereon after a rate not exceeding 5*l.* for the 100*l.* by the year, by instalments, within such period, not exceeding twenty years in each case, as they may determine, the amount thereof to be recoverable in the same manner as other expenses are to be recovered under this Act.

Occupiers to pay expenses

[CCXVII. (*g*) It shall be lawful for any vestry or

(*g*) This and the following two sections are repealed by the 96th sect. of the 25 & 26 Vict. c. 102. See that and the 97th sect. for provisions as to the payment of expenses to vestries and district boards by owners or occupiers; as to deductions by occupiers from their rent; and as to the deductions by owners or landlords receiving and paying rent.

for which owners are liable, and to be reimbursed out of the rent.

district board to require the payment of any costs or expenses which the owner of any premises may be liable to pay under this Act from any person who then or at any time thereafter occupies such premises; and the owner shall allow every such occupier to deduct all sums of money which he so pays, or which are levied by distress, out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent.]

Occupier not to be required to pay more than the amount of rent owing by him.

[CCXVIII. (*h*) Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier.]

Agreements between landlord and tenant not to be affected (*k*).

[CCXIX. (*i*) Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house,

(*h*) Repealed; see note to last section.

(*i*) Repealed; see note to sect. 217.

(*k*) Though these charges are by the Act thrown upon the owner, the tenant may by the terms of his lease bind himself to pay them. Thus a sub-lessee who takes on the conditions of the original lease, which binds the tenant to pay "all such parliamentary, parochial, and county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contri-

building, or other property, or to affect any contract whatsoever between landlord and tenant.]

As to service of notices, &c., on metropolitan and district boards and vestries.

CCXX. Any summons or notice, or any writ or other process at law or in equity, or any other matter or thing whatsoever, required to be served upon the metropolitan board of works or any district board or vestry, may, unless herein otherwise provided, lawfully be served by delivering the same personally to the clerk of such respective board or vestry, or by leaving the same at the principal office of such board or vestry.

As to service of notices on owners and occupiers and other persons.

CCXXI. All notices by this Act required to be given to the owner or occupier of any land or premises, or other person, may be served personally on such owner, occupier, or person, or left with some inmate of his place of abode, and any notice required to be given to any such owner or occupier may, if there be no occupier, be affixed to some conspicuous part of the land or premises, and it shall not be necessary in any notice to any owner or occupier of any land or premises to name such owner or occupier: Provided always, that where there is no occupier, and the owner of any such land or premises, and his place of abode or that of his agent is known to the vestry or board by or on behalf of whom such notice is given, or any of their officers, such notice shall be served on such owner personally, or left with some inmate of his place of abode, or transmitted to such owner through

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butions, burdens, duties, and services whatsoever as should be taxed, &c.," during the term, cannot deduct from his rent the expenses for making a drain to the premises which have been recovered from him by the district board, as the covenant in the lease throws the burden upon him. See *Sweet* v. *Scager*, 21 J. P. (C. P.) 406; 2 C. B. (N. S.) 119. And where a local Act empowered the tenant to deduct the costs paid by him to the commissioners for paving and flagging footways, but the tenant, in a lease made subsequently to the Act, covenanted to pay all taxes, rates, duties, levies, assessments, and payments whatever: held that these charges were within the covenant; *Payne* v. *Burridge*, 12 M. & W. 727.

the post office, addressed to him at his place of abode or last known place of abode in the United Kingdom, or served on his agent as aforesaid.

Authentication of documents.

CCXXII. Every notice, demand, or like document given by or on behalf of the metropolitan board of works, or any vestry or district board, under this Act, may be in writing or print, or partly in writing and partly in print, and shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same is given.

Proof of debts in bankruptcy.

CCXXIII. If any person against whom the metropolitan board of works, or any district board or vestry, have any claim or demand, become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the clerk or collector, in all proceedings under the bankruptcy or insolvency, to represent such board or vestry, and act in their behalf in all respects as if such claim or demand were the claim or demand of the clerk or collector, and not of such board or vestry.

Tender of amends.

CCXXIV. If any party have committed any irregularity, trespass, or other wrongful proceeding in the execution of this Act, or any Act incorporated therewith, or by virtue of any power or authority given by this Act or such other Act as aforesaid, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action (*a*).

Compensation, damage, and expenses how to be ascertained

CCXXV. In every case where the amount of any damage, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, or the amount of any damage, costs, or expenses is by this Act

(*a*) See the 25 & 26 Vict. c. 102, s. 106, *post*, requiring notice of action, &c., to metropolitan board, vestries, district boards, &c., and as to limitation, venue, &c.

directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount shall, in case of dispute, be ascertained and determined by and shall be recovered before two justices (*b*); and the amount of any compensation (*c*) to be made under this Act by the said metropolitan board, or any vestry or district board, shall, unless herein otherwise provided, be settled, in case of dispute, by and shall be recovered before two justices, unless the amount of compensation claimed exceed 50*l.*, in which case the amount (*d*) thereof shall be settled by arbitration, and recovered.

(*b*) By the 14th sect. of the 2 & 3 Vict. c. 71 (for regulating the police courts in the metropolis), one of the metropolitan police magistrates may do alone any act which by any law in use, or any law not containing an express provision to the contrary, is directed to be done by more than one justice; but he is not to act at special or petty sessions, &c. The remedy given by this section is exclusive, and no action lies at the suit of the vestry against the owner for the recovery of such expenses; *Vestry of St. Pancras* v. *Batterbury*, 26 L. J. (N. S.) C. P. 243.

(*c*) The provisions directing payment of compensation are contained in the 68th, 84th, 86th, and 120th sections relating to the functions of vestries and district boards; and the 135th section relating to those of the metropolitan board.

(*d*) The jurisdiction of the arbitrator seems to be confined to the question of *amount*, and this mode of settlement does not apply in a case in which the liability to make any compensation is to be tried. See *R.* v. *Metropolitan Commissioners of Sewers*, 22 L. J. (N. S.) Q. B. 234, which was a decision on the 69th section of 11 & 12 Vict. c. 112, empowering the arbitrator to determine the amount; and as to the jurisdiction of a jury to try a question of right under sect. 68 of Lands Clauses Act, see *R.* v. *London and North Western Railway Company*, 3 Ell. & Bl. 443; 23 L. J. (N. S.) Q. B. 185; *Ware* v. *Regent's Canal Company*, 23 L. J. (N. S.) 145, Ex. But it was held, under sect. 144 of the Public Health Act, that where damage only was disputed, but not liability, that was a dispute as to amount; *Bradby* v. *Southampton Local Board of Health*, 4 Ell. & B. 1014; and see *R.* v. *Lancaster and Preston Railway Company*, 6 Q. B. 759. Where the *liability* was disputed by a local board of health, the court granted a writ of *mandamus* to make compensation; *R.* v. *Bursiem Local Board of Health*, 6 Jur. (N. S.) 696; and the claimant was not bound to demand a specific amount; *ibid.*

according to the provisions contained in the Lands Clauses Consolidation Act, 1845, which are applicable where questions of disputed compensation are authorized or required to be settled by arbitration (*e*).

Method of proceeding before justices in questions of damages, &c.

CCXXVI. Where the amount of any compensation, or of any damage, costs, or expenses, is to be determined by or to be recovered before two justices, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such two justices to hear and determine the matter, and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and make such order, as well as to costs as otherwise, as to them may seem just.

Penalties, &c., to be recovered as provided by 11 & 12 Vict. c. 43 (*f*).

CCXXVII. Every penalty or forfeiture imposed by this Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before any justice in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three, "to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders."

Damages to be made

CCXXVIII. If through any act, neglect, or default on account whereof any person has incurred any penalty

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(*e*) The provisions as to the mode of proceeding for settling amount of compensation by arbitration, are contained in the 25th and following sections of the 8 Vict. c. 18, to the 37th inclusive; which see, *post*, Appendix.

(*f*) By the 104th sect. of 25 & 26 Vict. c. 102, *post*, this provision is extended to the recovery of damages, costs, &c., not otherwise provided for.

imposed by this Act, any damage to the property of the said metropolitan board, or any vestry or district board, has been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damage, in case of dispute, shall be determined by the justices by whom the party incurring such penalty is convicted, and the payment of the amount of such damage may be enforced in all respects as such penalty. Good in addition to penalty.

CCXXIX. It shall be lawful for any officer or servant of the said metropolitan board, or any vestry or district board, and for any police constable, and all persons called by him to his assistance, to seize and detain any person who has committed any offence against the provisions of this Act, or any byelaw made in pursuance thereof, and whose name and residence shall be unknown to such officer or servant or police constable, and convey him with all convenient despatch before some justice, without any warrant or other authority than this Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

CCXXX. No act, order, or proceeding in pursuance of this Act, or in relation to the execution thereof, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* (*g*) or otherwise into any of the superior courts, except as herein specially provided. Proceedings not to be quashed for want of form.

CCXXXI. If any person feel aggrieved by any adjudication or determination of any justice or justices with respect to any penalty or forfeiture under the provisions of this Act, such party may appeal to the general or quarter sessions; but no such appeal shall be entertained Parties allowed to appeal to quarter sessions, on giving security.

(*g*) Unless made without jurisdiction. See *R.* v. *Metropolitan Board of Works*, 27 L. J. (N. S.) Q. B. 5.

unless it be made within four months next after the making such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal is brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sureties, before two justices, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

CCXXXII. At the general or quarter sessions for which such notice is given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid to the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Penalties to be sued for within six months (*h*).

[CCXXXIII. (*h*) No person shall be liable to the payment of any penalty or forfeiture under this Act, or any byelaw made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting such offence have been made before such justice within three months next after the commission or discovery of such offence.]

Application of penalties.

[CCXXXIV. (*i*) If the application of any penalty or forfeiture be not otherwise provided for, one half thereof

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(*h*) This section is repealed by the 107th section of the 25 & 26 Vict. c. 102, which provides that complaint must be made within *six* months.

(*i*) This section is repealed by the 105th section of the 18 & 19 Vict. c. 120, *post*, which directs payment of any sums

shall go to the informer, and the remainder shall go to the vestry or district board of the parish or district in which the offence was committed, or if such vestry or board be the informers, the whole of the penalty recovered shall go to them; and all sums which shall go to or be recovered by any such vestry or board on account of any such penalty or forfeiture shall be paid to their treasurer, or otherwise into such bank, to their account, as they may direct, and shall be applicable to the general expenses of the vestry or board; provided that in every case where any vestry or board are liable to any penalty or forfeiture the whole of such penalty or forfeiture shall go to the informer.]

Special Provisions and Savings.

Provision for joint action of vestries, and elections out of vestries under local Acts.

CCXXXV. Where the vestries of any parishes mentioned in either of the schedules (A.) and (B.) to this Act now act jointly or in union, or exercise any powers or privileges jointly or in union, or elect guardians, directors, trustees, or other persons whomsoever whose offices are not expressed to be determined by this Act for any joint purposes, the vestries of such parishes elected under this Act may act jointly or in union, and shall have the like powers and privileges jointly or in union, and elect for such joint purposes in like manner and with the like effect; and where in any of the said parishes any guardians, directors, trustees, or other persons whosoever whose offices are not expressed to be determined by this Act are now by law elected out of the vestry of any such parish, such guardians, directors, trustees, or other persons as aforesaid may be elected out of or from

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or penalties recoverable by metropolitan board on account of or for any vestry or district board to the respective bodies, and makes them applicable to their general expenses, notwithstanding the provisions of the 2 & 3 Vict. c. 71, s. 47 (Metropolitan Police Act). See *Wray* v. *Ellis*, cited in note to sect. 105 of 25 & 26 Vict. c. 102, *post*.

the vestrymen and persons who under this Act are eligible as vestrymen for the same parish; and the office of no such guardian, director, trustee, or other person shall be determined by reason of his ceasing to be a vestryman in consequence of the passing of this Act; but every such guardian, director, trustee, or other person shall continue in office until such time as he would otherwise have ceased to hold his office.

Agreement between the London and North-Western Railway Company and certain paving commissioners confirmed.

CCXXXVI. And whereas by an agreement, made on the 10th day of August, 1854, between the London and North-Western Railway Company of the one part, and five of the commissioners acting under certain Acts of parliament relating to the paving and improving of certain streets in the parish of Saint Pancras in the county of Middlesex of the other part, it was agreed that the commissioners acting under the said Acts should, in consideration of the payment of the sums of 3,000*l.* and 500*l.* to the said commissioners by the said company, put into good and complete state of repair and condition certain roads therein particularly mentioned, and (except in the event therein mentioned of an Act not being obtained during the then next session to authorize the transfer to the said commissioners of the management of the said roads) would maintain the said roads at their own charge and expense: And whereas the said sums have been paid to the said commissioners, and it is expedient that the said agreement should be confirmed as hereinafter mentioned:

The said agreement shall be confirmed so far as the same relates to the repair and maintenance of the said roads; and the maintenance thereof shall be vested in the vestry of the said parish of Saint Pancras in like manner as if the said commissioners had been by Act of parliament liable to maintain and repair the said roads at the time of the commencement of this Act; and the sums paid to the said commissioners as aforesaid, or such part

thereof as may not have been already applied for the purpose of putting the said roads into good and complete repair, shall be paid over to the vestry of the parish of Saint Pancras, and be applied for the general benefit of such parish in aid of any rates to be raised in such parish to defray expenses of paving, anything in this Act or in any Act relating to the said company to the contrary notwithstanding.

Special provision as to powers of commissioners acting under 5 & 6 Vict. c. 48, as to paving Ely Place, &c. (*k*).

CCXXXVII. This Act shall not divest the commissioners under an Act of the session holden in the fifth and sixth years of Her Majesty, chapter forty-eight (local), "For paving, lighting, watching, cleansing, and improving Ely Place and Ely Mews, Holborn, in the county of Middlesex," of any of the powers or property vested in them under that Act, nor shall any of the provisions of this Act in relation to the paving, lighting, watering, and cleansing of streets apply to the parts within the limits of the said local Act, nor shall such parts be assessed or rated under this Act for defraying any expenses incurred by the district board for the Holborn district in relation to paving, lighting, watering, and cleansing; but such parts shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by the said district board, and for expenses incurred by the metropolitan board of works, and towards any sums required to be raised by such board under this Act, in like manner as other parts within the said district.

(*k*) Ely Place, which is part of the Liberty of Saffron Hill, Hatton Garden, and Ely Rents, is by sched. (B.) included in the Holborn district. It is private property, and though open to the public during the day, has never been dedicated to the public, and the commissioners for paving Saffron Hill, Hatton Garden, and Ely Rents, were decided to have no authority under 5 Will. 4, c. 18, s. 44, to enter it for the purpose of paving it; *Paul* v. *James*, 1 G. & Dav. 316.

Special provision as to parish of Woolwich(a).

CCXXXVIII. Notwithstanding anything in this Act contained to the contrary, the provisions of this Act shall extend and apply to the parish of Woolwich only to the extent and in manner hereinafter mentioned; (that is to say,)

A member of the metropolitan board of works shall be from time to time elected by the local board of health of Woolwich, at a meeting of such board, as by this Act directed with respect to the vestry of each of the parishes mentioned in the said schedule (A.):

The said metropolitan board shall have and perform, within and in relation to the said parish, all the powers and duties vested in them under this Act, in like manner as within and in relation to other parishes mentioned in the said schedule (A.), save that the said local board shall be subject to all orders of the said metropolitan board in relation to sewerage and otherwise, and to all precepts requiring payment of money, in all respects as the vestries of other parishes in the said schedule (A.) are subject to the same, in lieu of the vestry of the said parish; and all sums required to be paid by such precepts shall be defrayed out of any monies carried to the district fund account, or by means of a general district rate to be levied on the whole of the parish of

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(a) The parish of Woolwich was constituted a district under the Public Health Act, 1848, (11 & 12 Vict. c. 63,) the provisional order having been confirmed by the 15 & 16 Vict. c. 69. The paving, local sewerage, &c., are administered by the local board of health; but the parish is by this provision made subject to the jurisdiction of the metropolitan board in relation to sewerage, metropolitan improvements, &c., in the same manner as the other parishes in schedule (A.), the local board being substituted for the vestry, for the purpose of compliance with their orders. The third section of the Local Government Act, 21 & 22 Vict. c. 98, declares that that Act shall not be adopted by any place within the limits of the metropolis, as defined by the Metropolis Local Management Act.

Woolwich, or such part thereof as may be specified in the precept of the said metropolitan board.

Special provisions as to inclosed gardens in squares, &c.

CCXXXIX. Where any enclosed garden or ornamental ground is vested in or under the maintenance or management of any commissioners or other body, for the use of the inhabitants of any square, crescent, circus, street, or place, surrounding or adjoining such garden or ground, and the powers of such commissioners or other body do not extend beyond such garden or ground, and such square, crescent, circus, street, or place, or any adjoining street, way, or passage, so far as the same may abut upon any part of any house, shop, building, or tenement situate in or fronting any such square, crescent, circus, street, or place, nothing in this Act shall divest such commissioners or body of any property in such garden or ground, or in any railing or footway bounding the same, or of any duties, powers, or authorities now or hereafter vested in any such commissioners or other body, for or in relation to the paving, watering, cleansing, improving, or regulating of such enclosed garden or ornamental ground, or in relation to the railing or footway bounding the same, or to levy rates for defraying any expenses incurred in the execution of such duties or powers; and where the maintenance or management of any enclosed garden or ornamental ground is vested in any commissioners or other body, for the use or benefit of the inhabitants of any square, crescent, circus, street, or place surrounding or adjoining the same, who are liable to be assessed for the maintenance thereof, and the powers of such commissioners or other body extend beyond such enclosed garden or ornamental ground, and such square, crescent, circus, street, or place, or such adjoining street, way, or passage as aforesaid, the maintenance and management of such enclosed garden or ornamental ground shall be vested in a committee, consisting of not more than nine nor fewer than three of such inhabitants, and such committee shall be appointed annually in the first week in June by such inhabitants; and the vestry or board shall from time to

time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of the houses or buildings the occupiers whereof are now liable to be assessed for the same purpose: Provided always, that where any such rate which may now be levied for such purpose is limited in amount the rate to be levied under this provision shall be subject to the like limit.

Saving of powers and property of commissioners under 14 & 15 Vict. c. 95 (*b*).

CCXL. This Act shall not divest the commissioners for carrying into execution "The Crown Estate Paving Act, 1851," and the subsisting provisions of the Acts therein recited, or the commissioners of Her Majesty's works and public buildings, of any of the powers, duties, authorities, or property vested in them respectively under the said Acts; and nothing in this Act shall extend to authorize or empower any vestry or district board to exercise any power or control whatsoever in respect of paving, maintaining, lighting, watering, cleansing, and regulating any streets or places in the neighbourhood of the houses of parliament, delineated on a plan marked E., referred to by "The Crown Estate Paving Act, 1851," or any portion of the district now under the management of the commissioners for carrying

(*b*) The powers vested in the commissioners under the 5 Geo. 4, c. 100, so far as concerned the making and maintenance of sewers, drains, and watercourses, and the making of sewers' rates for those purposes, were by the 11 & 12 Vict. c. 112, s. 143, transferred to the metropolitan commissioners of sewers. The Crown Estate Paving Act, 14 & 15 Vict. c. 95, mentioned in this section, transferred certain portions of the district included within the above Acts to the parishes, the control over the sewers being still reserved to the metropolitan commissioners. By sect. 25 the management of the places comprised in plan E. was vested in the commissioners of Her Majesty's works, &c. The places comprised in that plan were parts of New Palace Yard, St. Margaret Street, Old Palace Yard, and certain other adjoining streets and places. The jurisdiction of the former commissioners over certain

into execution the said Crown Estate Paving Act, and the subsisting provisions aforesaid, or to exercise any power or control whatsoever in or over any of the gardens or pleasure grounds the management whereof is now or may for the time being be vested in such last-mentioned commissioners; nor shall any such street or place, or any portion of such district, as aforesaid, be assessed or rated under this Act for defraying any expenses incurred by any vestry or district board in relation to paving, lighting, watering, or cleansing, but such streets, places, and district shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by any such vestry or board, and for expenses incurred by the metropolitan board of works, and towards any sums required to be raised by such board under this Act as by this Act provided.

Saving of the rights of the commissioners of works.

CCXLI. Nothing in this Act shall divest the commissioners for the time being of Her Majesty's works and public buildings of any power or property now or which for the time being may be vested in them; and nothing in this Act shall extend to authorize or empower any vestry or district board to exercise any power or control whatsoever in or over any of the royal or public parks, gardens, or pleasure grounds, the management whereof is now or may be for the time being vested in such commissioners; and nothing in this Act shall abridge, alter, or affect any right, power, exemption, or remedy of the Queen's most excellent Majesty, her heirs or successors, or the said commissioners, in, over, or in relation to the possessions of the crown or of the public.

Saving of powers (*c*) of city commissioners of

CCXLII. Nothing in this Act shall divest the commissioners of sewers of the city of London of any powers or property vested in them in relation to such parts of

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parts of the crown estate near the Regent's Park, &c. was transferred to the commissioners under that Act.

(*c*) See note (*b*) to sect. 1, *ante*, for definition of the word "city" in the City of London Sewers Act, 1848. The saving in the present section applies to parishes which are partly

sewers over certain parts of parishes in schedule (B).

any of the parishes mentioned in schedule (B.) to this Act as are within the city of London, nor shall such parts be subject to be rated or assessed by any district board, but shall be subject to all the powers of the metropolitan board of works as other places in the city of London.

Saving rights of Metropolitan Sewage Manure Company, acting under 9 & 10 Vict. c. ccexeviii. and 10 & 11 Vict. c. exxxviii.

CCXLIII. Nothing in this Act shall extend to or affect any of the rights, privileges, powers, or authorities vested in the Metropolitan Sewage Manure Company by an Act of the session holden in the ninth and tenth years of Her Majesty, intituled "An Act to incorporate a Company by the Name of the Metropolitan Sewage Manure Company," or an Act of the session then next following, intituled "An Act for enabling the Metropolitan Sewage Manure Company to alter the Line of their Works, and for other Purposes:" (*d*) Provided always, that all rights, powers, and authorities by either of the said Acts vested in the commissioners of sewers for the time being for the city and liberty of Westminster and part of the county of Middlesex (*e*) shall be vested in the metropolitan board of works, and the provisions of the said Acts shall be construed as applying to such board in lieu of such commissioners, but any order or act which might have been made or done by the said commissioners at a court of sewers may be made or done by the said metropolitan board at any meeting of such board.

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within and partly without the city of London, and it provides that nothing in the Act shall divest the commissioners of sewers of the city of the powers or property vested in them in relation to such parts of those parishes as are within the city, and that such parts shall not be subject to be rated or assessed by any district board, that is with respect to sewers and other matters reserved to the city of London; *Daw* v. *The Metropolitan Board of Works*, 31 L. J. (N. S.) C. P. 223.

(*d*) The Sewage Manure Company under the Acts referred to were established for the purpose of collecting the sewage of the King's Scholars' Pond and Ranelagh Sewers, and distributing the same for agricultural purposes.

(*e*) The Acts imposed upon the company the obligation of giving notice to those commissioners before making any new sewers, and of conforming to their directions in their construction.

Saving rights of commissioners or trustees of turnpike roads.

CCXLIV. Nothing in this Act shall divest the commissioners or trustees of any turnpike road of any powers or property vested in them as such commissioners or trustees, save as herein expressly provided (*f*) with respect to turnpike roads, and save that the footpaths of any such road shall be under the care and management of the vestries and district boards of the parishes or districts in which the same are situate in like manner as other footpaths in such parishes and districts: Provided always, that the provisions of this Act transferring to vestries and district boards powers and property vested in any commissioner or other body in relation to the paving, lighting, watering, cleansing, and improving of their parishes and districts, and all other provisions of this Act incident to or consequent upon such transfer, shall apply to all powers and property vested in the trustees of the Commercial-road, so far as regards any streets or highways other than such road, and also so far as regards the footpaths of such road.

Saving for metropolitan police commissioners.

CCXLV. Nothing in this Act shall interfere with the powers given by law to the commissioners of the police of the metropolis.

Not to prejudice dispute between Battersea and Penge.

CCXLVI. Nothing in this Act shall be construed to prejudice or affect any question as to whether the hamlet of Penge is or is not a part of the parish of Battersea.

Repeal of Acts inconsistent with this Act.

CCXLVII. All Acts of parliament in force in any parish or place to which this Act extends, or in any part of such parish or place, shall, so far as the same are inconsistent with the provisions of this Act, be repealed (*g*) as regards such parish or place, or such part thereof,

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(*f*) See s. 157, *ante* (now repealed), and s. 33 of 25 & 26 Vict. c. 33, *post*, for regulations as to breaking up turnpike roads.

(*g*) This does not apply to powers contained in a railway Act, per Vice-Chancellor Wood, *London and Blackwall Railway Company* v. *Board of Works for the Limehouse District*, 20 J. P. 789.

notwithstanding any provisions of this Act continuing and transferring respectively to vestries of parishes and transferring to district boards any duties, powers, or authorities now vested in vestries, commissioners, or other bodies.

In case of conflict with the provisions of this Act, provisions of local Acts may be varied by order in council on petition of boards or vestries.

CCXLVIII. Upon the petition of the metropolitan board of works, or of any district board or vestry, representing to Her Majesty in council that by reason of the provisions of any local Act of parliament relating to any district or parish, or any part thereof respectively, difficulties have arisen in the execution of this Act and of such local Act or either of them, and praying for a suspension or alteration of all or any of the provisions of such local Act, or for the establishment of other provisions in lieu thereof under this enactment, it shall be lawful for Her Majesty, by order in council, to suspend or alter all or any of the provisions of such local Act, and to make other provisions in relation to the matters thereof as Her Majesty, with the advice of her privy council, may think necessary under the circumstances of the case; and every such order in council shall be laid before both houses of parliament within one month after the making thereof, if parliament be then sitting, or, if parliament be not sitting, then within one month after the next meeting of parliament, and shall be published in the London Gazette: Provided always, that no such order in council shall remain in force beyond the term of one year from the making thereof.

Power to extend Act to adjoining Parishes.

Act may be extended by order in council to

CCXLIX. In case and when and so often as it is made to appear to Her Majesty in council, upon the representation of the metropolitan board of works (*h*) that the

(*h*) See provision in 25 & 26 Vict. c. 102, s. 42, *post*, requiring, before any representation is made under this enactment, two months' previous notice to the churchwardens and surveyors of highways of the parish to which the representation relates.

provisions of this Act should be extended to any parish adjoining the metropolis, and in which there are not less than seven hundred and fifty inhabitants rated to the relief of the poor, it shall be lawful for Her Majesty, with the advice of her privy council, to order that the provisions of this Act shall extend to such parish, from and after a day to be mentioned in this behalf in the order in council, and that such parish shall join with any parish or parishes or district in such order named in the election from time to time of the member or members of the metropolitan board of works by this Act directed to be elected for such parish or parishes or district, and to make such provision as to the mode in which every such joint election shall take place, and otherwise in relation thereto, as to Her Majesty in council may seem necessary and proper; and every such order shall be published in the London Gazette; and from and after the time mentioned in such order for the extension of the provisions of this Act to any parish as aforesaid, the provisions of this Act shall extend to and be in force therein, in like manner, so far as circumstances will admit, as such provisions apply to any parish mentioned in schedule (A.) of this Act, subject, nevertheless, to the provisions in such order contained in relation to the election by such parish jointly as aforesaid of a member or members of the said metropolitan board: Provided always, that notice of every such representation, and of the time when it shall please Her Majesty to order that the same be taken into consideration by her privy council, shall be published in the London Gazette one month at least before such representation is so considered.

Parishes adjoining the metropolis not having less than 750 ratepayers.

Interpretation and Commencement of Act.

CCL. In the construction of this Act "the metropolis" shall be deemed to include the City of London,

Interpretation of terms: (i)

(i) See interpretation of terms in s. 112 of amending Act, 25 & 26 Vict. c. 102, *post*.

"the metropolis:" "the City of London:" "Parish:" "Overseers the poor:" "Rates:" "Owner:" "Street:"(*b*)

and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to this Act; "the City of London" shall be deemed to include all parts now within the jurisdiction of the commissioners of sewers for the City of London; and the word "parish" shall include any place mentioned in schedule (A.) to this Act, and any place or combination of places mentioned in schedule (B.) to this Act, for which one or more member or members is or are to be elected to any district board; the expression "the overseers of the poor" (*a*) shall include any persons authorized to make and collect or cause to be collected the rate for the relief of the poor in any parish; any expression referring to any rate or rates raised under this Act by the metropolitan board of works or any vestry or district board shall mean the sums and rates authorized to be raised by the said metropolitan board and the sums authorized to be raised by any vestry and district board respectively; the word "owner" shall, except for the purpose of the provision of this Act requiring notice to be served on owners or reputed owners of land, before application to one of Her Majesty's principal secretaries of state for his consent to exercise powers of taking land, or any right or easement in or over land, compulsorily, mean the person for the time being receiving the rackrent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent; the word "street" shall apply to and include any highway (except the carriageway of any turnpike road) and any road, bridge (not being a county bridge),

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(*a*) In *Christie* v. *The Guardians of the Poor of St. Luke, Chelsea*, 27 L. J. (N. S.) M. C., 153, it was held to be no objection to a rate made by the guardians of the poor of the parish of St. Luke, Chelsea, pursuant to an order of the vestry, that the order was addressed to the *overseers* instead of to the *guardians*.

(*b*) See *Le Nève* v. *The Vestry of Mile-End Old Town*, 27 L. J. (N. S.) Q. B. 208, note (*c*) to s. 119, *ante*.

lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board (*c*); and the word "sewer" (*d*) shall mean and include sewers and drains of every description, except drains to which the word "drain," interpreted as aforesaid, applies; and the word "ashpit" shall include "dustbin." "Drain:" "Sewer:" "Ashpit."

CCLI. This Act shall commence and come into operation, save as herein otherwise provided, on the 1st day of January, 1856. Commencement of Act.

(*c*) Or pursuant to the order, or direction, or with the sanction or approval of the metropolitan commissioners of sewers; sect. 112 of 25 & 26 Vict. c. 102, *post*.

(*d*) See *Sutton* v. *Mayor of Norwich*, 27 L. J. (N. S.) Ch. 739, where it was held that the power to construct sewers does not authorize a local board to enter upon a man's land, against his wish, to construct a reservoir.

SCHEDULE (A.)

PART I.

Parishes each electing Two Members of the Metropolitan Board of Works.

Saint Marylebone.
Saint Pancras.
Lambeth.
Saint George, Hanover Square.
Islington, Saint Mary.
Shoreditch, Saint Leonard.

PART II.

Parishes each electing One Member of the Metropolitan Board of Works.

Paddington.
Saint Matthew, Bethnal Green.
Saint Mary, Newington, Surrey.
Camberwell.
Saint James, Westminster.
Saint James and Saint John, Clerkenwell, to be considered as one parish.
Chelsea.
Kensington, Saint Mary Abbot.
Saint Luke, Middlesex.
Saint George the Martyr, Southwark.
Bermondsey.
Saint George in the East.
Saint Martin in the Fields.
Hamlet of Mile End Old Town.
Woolwich.
Rotherhithe.
Saint John, Hampstead.

SCHEDULE (B.)

PARISHES UNITED INTO DISTRICTS FOR THE PURPOSES OF THE ACT.

PART I.

Districts each electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Whitechapel District	Saint Mary Whitechapel	27
	Christchurch Spitalfields	12
	Saint Botolph without Aldgate, in the county of Middlesex - -	6
	Holy Trinity, Minories -	1
	Saint Katherine, Precinct of - - -	1
	Mile End New Town, Hamlet of - -	6
	Liberty of Norton Folgate - - -	3
	Old Artillery Ground -	1
	Tower, District of -	1
	TOTAL - -	58
Westminster District	Saint Margaret - -	30
	Saint John the Evangelist	27
	TOTAL - -	57
Greenwich District -	Saint Paul, Deptford, including Hatcham -	21
	Saint Nicholas, Deptford	6
	Greenwich - - -	30
	TOTAL - -	57

Name of District.	Parishes.	Number of Members to be elected to District Board.
Wandsworth District	Clapham - - -	18
	Tooting Graveney -	3
	Streatham - - -	9
	Saint Mary, Battersea, excluding Penge -	12
	Wandsworth - -	9
	Putney, including Roehampton - -	6
	TOTAL - -	57
Hackney District -	Hackney - - -	51
	Saint Mary, Stoke Newington - - -	6
	TOTAL - -	57
Saint Giles District -	Saint Giles in the Fields	27
	Saint George, Bloomsbury - - -	21
	TOTAL - -	48
Holborn District	Saint Andrew, Holborn above Bars - -	24
	Saint George the Martyr	9
	Saint Sepulchre, in the county of Middlesex -	6
	Saffron Hill, Hatton Garden, Ely Rents, and Ely Place - -	9
	The Liberty of Glasshouse Yard - -	1
	TOTAL - -	49

Name of District.	Parishes.	Number of Members to be elected to District Board.
Strand District -	Saint Anne, Soho -	18
	St. Paul, Covent Garden	9
	Saint John the Baptist, Savoy, or Precinct of the Savoy - -	1
	Saint Mary-le-Strand -	3
	Saint Clement Danes -	15
	Liberty of the Rolls -	3
	TOTAL - -	49
Fulham District -	Saint Peter and Saint Paul, Hammersmith	24
	Fulham - - -	15
	TOTAL - -	39
Limehouse District	Saint Anne, Limehouse	15
	Saint John, Wapping -	3
	Saint Paul, Shadwell -	6
	Ratcliff, Hamlet of -	12
	TOTAL - -	36
Poplar District -	All Saints, Poplar -	24
	Saint Mary, Stratford-le-Bow - - -	9
	Saint Leonard, Bromley	15
	TOTAL - -	48
Saint Saviour's District.	Christ Church - -	15
	Saint Saviour (including the Liberty of the Clink) - - -	24
	TOTAL - -	39

PART II.

Districts united for electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Plumstead District	Charlton next Woolwich	9
	Plumstead - - -	12
	Eltham - - -	6
	Lee - - - -	9
united with	Kidbrooke - - -	1
	TOTAL -	37
Lewisham District	Lewisham, including Sydenham Chapelry -	24
	Hamlet of Penge - -	3
	TOTAL -	27

PART III.

Parish and District united for electing One Member of the Metropolitan Board of Works.

The Parish of Rotherhithe		
united with		
Saint Olave District	Saint Olave - -	12
	Saint Thomas Southwark	1
	Saint John Horsleydown	15
	TOTAL -	28

SCHEDULE (C.)

The Close of the Collegiate Church of Saint Peter.
The Charter House.
Inner Temple.
Middle Temple.
Lincoln's Inn.
Gray's Inn.
Staple Inn.
Furnival's Inn.

SCHEDULE (D.)

Main Sewers of the Metropolis.

North Side of the Thames.

Stamford Brook (*West Branch.*)

Commences at an angle in the boundary between the parishes of Hammersmith and Acton, on the south of the Uxbridge and London Road, and tangent to a footpath running south from East Acton Lane, extending thence in a south-easterly direction to Paddenswick Green, when it joins the east arm of the said brook.

Stamford Brook (*East Branch*).

Commences at a point on the boundary between the parishes of Hammersmith, Willesden, and Acton, about 100 feet north-east of the Old Oak Bridge over the North-Western Railway, extending thence in a southerly direction to Paddenswick Green.

The united streams of the above two branches discharge into Hammersmith Creek.

Brook Green Sewer.

Commences in Wood Lane, at the keeper's lodge, on the south side of Wormwood Scrubs, and discharges into the river Thames by two outlets, viz., Bridge Road and Queen Street, on the east side of Hammersmith Suspension Bridge.

A branch from the above commences in New Road, at the north end of the Grove, and joins the main sewer at Broadway, Hammersmith.

Fulham Sewer.

Commences at a sluice in the moat surrounding the Bishop of London's Palace, on the west side of the junction of High Street, Fulham, with the Fulham Road, and discharges into the Thames under the toll-house of Fulham Bridge.

Eel Brook Sewer.

Commences at a point in North End Road, about 80 feet north-west of Walham Green Church, and discharges into Kensington Canal on the south-east side of the Imperial Gasworks.

Counter's Creek Sewer (Main Line).

Commences at a point in the Harrow Road, about 200 feet west of Kensal Green Cemetery Gate, and discharges into the Thames at the outlet now forming on the south-west side of Cremorne Gardens.

Counter's Creek Sewer (West Branch).

Commences at a culvert under the Grand Junction Canal, on the boundary between the parishes of Kensington and Hammersmith, at the south-west corner of

Kensal Green Cemetery, and joins the above main line at Latimer Road at its junction with the Bromley Road.

Counter's Creek Sewer (East Branch).

Drains the whole of Kensal New Town, situate in a detached portion of the parish of St. Luke, Chelsea, and part of the parish of St. Mary, Paddington, and passes under the Great Western Railway at a bridge leading to Portobello Lane, on the south-east side of the Western Gasworks, and joins the main sewer at a point about a quarter of a mile north-west of Notting Barn Farm.

Counter's Creek Sewer (Kensington Branch).

Commences in Victoria Grove at about 50 feet to the north of Uxbridge Road, and joins the main line at the junction of Pembroke and Warwick Roads.

Sewer to the Metropolitan Sewage Manure Works.

Commences at Knightsbridge at its junction with the Ranelagh Sewer, and extends thence in a south-westerly direction to the works at Stanley Bridge.

Millman's Row Sewer.

Commences in Fulham Road, at about 780 feet west, and at about 230 feet east of the junction of Park Walk with Fulham Road, and discharges into the river Thames opposite to Millman's Row.

Church Street Sewer.

Commences in Gloucester Road at its junction with Canning Place, at about 750 feet south of Hogmore Lane Gate, and discharges into the Thames on the south side of Chelsea Old Church.

Queen Street Sewer.

Commences between Gloucester Road and Hyde Park Gate south, on the south of Kensington Road, and about 300 feet south of Kensington Gate, runs through Old Brompton, and discharges into the river Thames on the east side of Chelsea Free Dock.

Smith Street Sewer.

Commences in the Kensington Road at a point about 750 feet west of Prince of Wales Gate, and extends thence by Rutland Gate, Rutland Street, and Fulham Road, on the west of Brompton Crescent, and along College and Markham Streets, and discharges into the Thames on the west side of Chelsea Royal Hospital.

Ranelagh Sewer.

The branch sewers from Edgware Road, Finchley Road, and Kilburn Vale unite at Kilburn Bridge, and form the main line, which, running in a southerly direction, discharges into the river Thames on the south-east side of Chelsea Royal Hospital.

This sewer has several branches, the chief of which commences in Grove End Road, at about 900 feet west of St. John's Wood Road, extending thence by Lisson Grove, New Road, Grand Junction Road, and Albion Street, to a tumbling bay, where it joins the main sewer in Uxbridge Road.

King's Scholars Pond Sewer.

Commences in the Finchley Road, at about 1,500 feet above Junction Road toll gate, and discharges into the river Thames at the Equitable Gasworks, about 700 feet above Vauxhall Bridge.

King's Scholars Pond Sewer (Pall Mall Branch).

Commences at Waterloo Place, and joins the main line opposite the entrance of Buckingham Palace.

Grosvenor Ditch.

Commences in Page Street, at about 150 feet east of the junction with Regent Street, Vauxhall Bridge Road, and discharges into the river Thames at the northern extremity of Milbank Road.

Horseferry Road Sewer.

Commences in Grey Coat Place, and discharges into the river Thames at the Horseferry Stairs.

Wood Street Sewer.

Commences in Grey Coat Place, and discharges into the river Thames in the prolongation of Wood Street.

Victoria Street Sewer.

Commences at Shaftesbury Terrace, Pimlico, and discharges into the Thames at Percy Wharf.

Regent Street Sewer (Western Branch).

Commences in the outer circle of the Regent's Park, at about 200 feet north-west of Hanover Gate entrance, and joins the eastern branch in the New Road, opposite to the prolongation of Portland Place.

Regent Street Sewer (Eastern Branch).

Commences in Upper Albany Street, at about 200 feet south of Collateral Cut Bridge over the Regent's Canal, and joins the western branch at the aforesaid point in the New Road.

The main sewer proceeds thence along Regent Street, and discharges into the river Thames at Percy Wharf.

Northumberland Street Sewer (Western Branch).

Commences in Warren Street, on the north of Fitzroy Square, and proceeds in a southerly direction along Cleveland, Newman, Wardour, Princes and Panton Streets, Haymarket, to Charing Cross, opposite the district post office.

Northumberland Street Sewer (Eastern Branch).

Commences in New Road, at about 170 feet west of the junction with Hampstead Road, and proceeds along Tottenham Court Road, High Street, Seven Dials, and St. Martin's Lane, to Charing Cross, when it joins the western branch.

The main line proceeds along Northumberland Street, and discharges into the Thames at Northumberland Wharf.

Savoy Street Sewer.

Commences in Stanhope Street, Regent's Park Basin, at a point at about 160 feet north of the junction with Edward Street, and proceeds along Robert, George, Gower, Charlotte, Bloomsbury, Endell, Bow, Wellington, and Savoy Streets, and discharges into the Thames at a point about 100 feet above Waterloo Bridge.

Norfolk Street Sewer.

Commences at the junction of Drury Lane and Long Acre, and passes by the Olympic Theatre, and along Newcastle Street and Strand, and discharges into the river Thames opposite Norfolk Street.

Essex Street Sewer (Western Branch).

Commences in Russell Square, opposite Montague Place, and proceeds along Montague, Russell, and Museum Streets, Drury Lane, Great Wild Street, and Vere Street, to the junction of the eastern branch at the intersection of Sheffield and Gilbert Streets, Clare Market.

Essex Street Sewer (Eastern Branch).

Commences at the corner of Tottenham Court Road, and proceeds along New Oxford Street, Newton Street, and Cross Lane, Parker and Great Queen Streets, west side of Lincoln's Inn Fields, to the junction with the western arm above described.

The main sewer proceeds thence along Gilbert Street, Clement's Lane, Pickett Street, and Essex Street, and discharges into the river Thames at Temple Pier.

Fleet Sewer.

Commences in High Street, Hampstead, at the junction of High Street with Flask Walk, extending thence through South End Green, Gordon House Lane, Victoria Road, Great College Street, Old St. Pancras Road, Bagnigge Wells Road, West of Middlesex House of Correction, and by Farringdon Street to Blackfriars Bridge, where it discharges into the river Thames.

This sewer has numerous tributaries running into other districts, the chief of which are Camden Road, Caledonian Road, Pentonville Hill, River Street, St. John's Road, Holborn Hill, and Guildford Street.

Goswell Street Sewer.

Commences in Sydney Street, at the junction of Sydney Grove, and discharges into the Thames at Walbrook.

London Bridge Sewer (*City Road Branch*).

Commences at Duncan Terrace, on the west side of the New River, and joins the main line at the north end of Finsbury Pavement.

Another branch commences in Lonsdale Square, Islington, and, extending thence through Barnsbury Street, Richmond Grove, passes under the New River at New North Road Bridge, thence along Portland Place, King Street, under the Regent's Canal, by Sturt's Lock, Walbrook Street, and Critchill Place, where it joins another branch at St. John's Church, Hoxton.

London Bridge Sewer (*Balls Pond Branch*).

Commences on the boundary between St. Mary, Islington, and St. John, Hackney, at Cock and Castle Lane, Dalston, and passes by Balls Pond and Rosemary Branch Bridge to the junction at St. John's Church, above described. The united sewers then discharge into the river Thames at London Bridge.

London Bridge Sewer (*Shoreditch Branch*).

Commences in Queen's Road, at the junction with Laurel Street, Dalston, and extending thence along Queen's Road, Great Cambridge Street, Hackney Road, Shoreditch, and Bishopsgate, joins the main line at King William's Statue.

Irongate Sewer.

Commences in the City, and proceeds along the south-west side of Houndsditch, west side of Minories, and by the precincts of Old Tower Without, and discharges into the river Thames at Irongate Stairs, on the east of the Tower.

Nightingale Lane Sewer.

Commences in Union Street, Old Artillery Ground, and Booth Street, Spitalfields, and extends thence along Commercial, Leonard, Wells, and Parson Streets, and Nightingale Lane, and discharges into the Thames on the western side of the entrance into Hermitage Basin.

Hermitage Street Sewer.

Commences in Redmead Lane, on the boundary between the parishes of St. John, Wapping, and St. George in the East, and extends thence along Great Hermitage Street, and discharges into the River Thames at about 50 feet east of Union Stairs.

Old Gravel Lane Sewer.

Commences at the boundary between the parishes of St. George in the East and St. John, Wapping, in Old Gravel Lane, and discharges into the river Thames at a point about 110 feet west of the Thames Tunnel.

Wapping Wall Sewer.

Commences in Green Bank, at the junction of Upper Well Alley, and passes through King Street, and discharges into the river Thames at about 120 feet on the north-east side of New Crane Dock.

Shadwell Basin Sewer.

Commences on the north side of the Eastern Dock, at the termination of West Gardens, and extends thence between the warehouses and New Gravel Lane, on the north side of Shadwell Basin, and along Shadwell Dock Street, and discharges into the river Thames at the eastern pier of the Shadwell entrance to the London Docks.

Pennington Street Sewer.

Commences at the boundary between the parishes of St. George in the East and St. John, Wapping, in St. George Street, and extends thence along Pennington Street, Old Gravel Lane, West Gardens, Cow Lane, Little Spring Street, Labour-in-Vain Street, and Lower Shadwell, and discharges into the river Thames at Shadwell Dock Stairs.

Ratcliffe Highway Sewer (*Western Branch*).

Commences at the junction of Sherwood Place with Meed Street, at about 900 feet south-east of Shoreditch Church, and extends along Turvile, Thomas, and High Streets, and Whitechapel Road, to the junction of New Road with Whitechapel Road.

Ratcliffe Highway Sewer (*Eastern Branch*).

Commences at the junction of Hague Street with Bethnal Green Road, and extends along Hague Street, Wellington and Charles Streets, to the junction of New Road with Whitechapel Road, above described.

Ratcliffe Highway Sewer (North-Eastern Branch).

Commences from the rear of Shoreditch Church, and proceeds along Old Castle Street, Virginia Row, Wellington Row, Old Bethnal Green Road, Cambridge Road, Cleveland Street, King Street, Jamaica Street, Havering Street, and Love Lane, to Ratcliffe Highway.

The main sewer proceeds along New Road, Cannon Street Road, St. George's Street, High Street, Shadwell, and Broad Street, and discharges into the river Thames at Ratcliff Cross Stairs.

Limekiln Dock Sewer.

Commences at the junction of Victoria Road with Bishop's Road, on the south-western side of Bonner's Hall Bridge, leading into Victoria Park, and extends along Victoria Road, east side of Bethnal Green, Globe Road, White Horse Lane, and Rhodeswell Road, and passes under the Regent's Canal at Rhodeswell Wharf, thence along the Black Ditch, Upper North Street, and North Street, and discharges into the river Thames at Limekiln Dock.

Great Sluice and Drunken Dock Sluice.

These sluices are situated on the eastern side of the Isle of Dogs, and drain the whole of that part of the isle south of the West India Dock Basin. They have four inlet sluices for purposes of flushing.

Blackwall Sluice.

Commences at Batson's Inlet, near Limehouse entrance to the West India Dock, and discharges into the Thames on the north side of the Blackwall entrance to the West India Dock.

Eastern Counties Railway Sewer.

Commences at Mile End Bridge, over the Regent's Canal in Bow Road, proceeds along Bow Road, Tredegar Square, and by the railway, and discharges into the river Lea, where the viaduct of the said railway crosses that river.

Hackney Brook Sewer (Main Line).

Commences in the High Road opposite to St. John's Church, Upper Holloway, and extends thence in a south-east direction along Holloway Road to a point about 450 feet south of Tollington Road, thence in an easterly direction by the north of Abney Park Cemetery, Hackney Downs, and Hackney Wick, and discharges into the river Lea, immediately to the north of Old Ford Wharf.

Hackney Brook Sewer (Wick Lane Branch).

Commences in Old Ford Road, on the east side of Old Ford Bridge, crossing the Regent's Canal, and extends along Grove Road, Wick Lane, and joins the main sewer at Hackney Wick.

SOUTH SIDE OF THE THAMES.

Beverley Brook.

Commences on the boundary between the parishes of Putney and Wimbledon, at a point about 1,800 feet south of Beverley Bridge, on the Kingston Road, and discharges into the river Thames about half a mile above Putney Town.

Sewer between Parishes of Putney and Wandsworth.

Commences on the road from Kingston to Wandsworth, and discharges into the river Thames at a point about 1,500 feet below Fulham Bridge.

Wandle River.

Commences at a point where the parishes of Streatham and Tooting intersect the river, and discharges into the river Thames at the town of Wandsworth.

Falcon Brook.

Commences at Tooting Common, and discharges into the river Thames at Battersea Creek.

Lord Spencer's Sewer.

Commences in the town of Battersea, and extends in an easterly direction through Battersea Park, and discharges into the river Thames at about 400 feet below Battersea New Bridge.

Heath Wall Sewer (Main Line).

Commences at the Falcon Brook at a sluice about 300 feet north of the South-Western Railway, and extending along the south margin of Battersea Fields, discharges into the Thames at Heath Wall Mill.

Heath Wall Sewer (Clapham Rise Branch).

Commences on the boundary between the parishes of Clapham and Lambeth at the intersection of New Road with Clapham Rise, and extends along the east

side of Clifton Street, and joins the main sewer at a point about 100 feet north-east of New Road, Battersea Fields.

Effra Sewer.

Commences at the boundary between the parishes of St. Mary, Lambeth, and Croydon, in Westow Hill Road, immediately opposite to the convent of "Our Lady," and discharges into the river Thames at Vauxhall Creek, on the south side of the Phœnix Gasworks, and near to Vauxhall Bridge.

Effra Sewer (*Upper Norwood Branch*).

Commences in Westow Hill Road on the boundary between the parishes of Lambeth and Croydon, at about 200 feet west of the Crystal Palace Hotel, and proceeds northward along the boundary between the parishes of St. Mary, Lambeth, and St. Giles, Camberwell, and joins the main sewer at a point about 230 feet west of Croxted Lane.

Duffield and Battle Bridge Sewers.

These sewers drain the most densely inhabited portions of the south side. The inlets for flushing purposes are at Kennington, Vauxhall, Lambeth Church, and Stangate. The outlets are by the following sluices, viz., the Arnold and Dover Sluices, near Waterloo Bridge; Pudding Mill, near Blackfriars Bridge; the Boar's Head, Welsh Troopers, Black Lion, and Bear Sluices, near Southwark Bridge; the Bridge Yard, Battle Bridge; and Green Bank, in St. Olave, Southwark; Freeman's Lane, St. John Jerusalem; and Great St. John, in Horsleydown; and the Salisbury and Duffield Sluices, in Bermondsey.

Limekiln Sluice.

Drains the open fields of part of the parish of Rotherhithe, and proceeds along Swan Lane, and discharges into the river Thames at about 300 feet east of the Thames Tunnel.

Globe Stairs Sewer.

Drains the Northern Basin of the Commercial Dock Company, and extends along the eastern side of St. Paul's Church, Rotherhithe, and part of Rotherhithe Street, and discharges into the river Thames at Globe Stairs.

Sewer at Durand's Wharf (Rotherhithe).

Commences to the south-east of Bull-Head Dock, Rotherhithe, and pursues an easterly course by Rotherhithe and Lower Queen Street, and discharges into the river Thames at a "10 footway," opposite to Cow Lane.

Rotherhithe Pier Sewer.

Commences in Trinity Street, at a point about 400 feet south of Cow Lane, and proceeds along Trinity Street, and discharges into the river Thames at Rotherhithe Boat Pier.

Earl Sewer (Main Line).

Commences in Cold Harbour Lane, at a point about 1,100 feet north-east of its junction with Loughborough Road, and proceeds along High Street, Camberwell, Camberwell Road, Boundary Lane, and eastward along the boundaries of several parishes, and discharges into

the river Thames on the boundary between the counties of Surrey and Kent, near to the Royal Dock Yard, Deptford.

Earl Sewer (*Wyndham Road Branch*).

Commences on the east side of Kennington Park, and proceeds along New Row, and southward on the east of Thomas Street, eastward along Wyndham Road, and joins the main sewer at a point about 100 feet south of Southampton Street, Camberwell.

Earl Sewer (*White Post Lane Branch*).

Commences in Victoria Road, at the junction with Choumert Place and Cutthroat Lane, near Peckham Rye, and proceeds along Victoria Road, Hanover Street, Rye Lane, High Street, Meeting House Lane, Halfway House Lane, and White Post Lane, and joins the main sewer at the junction of the parishes of Rotherhithe, St. Paul's, Deptford, and St. Giles, Camberwell.

Royal Dock Yard Sewer.

Commences on the east of Black Horse Bridge, and extends eastward on the south side of the Mast Pond, and discharges into the river Thames opposite to the Royal Victualling Yard.

Ravensbourne and Sydenham Sewer.

Commences at Bell Green, and extends along and by Catsford Hill Road, Lewisham, and Bromley Road, Silver Street, Loam Pit Vale, and Mill Lane, and discharges into Deptford Creek at Parish Wharf, near Kingsford Mill.

Ravensbourne and Lee Green Sewer.

Commences in the Eltham Road, about 300 feet east of Lee Green, and proceeds along Lee Road, Lewisham Road, Bath Place, Egerton Road, and North Pole Lane, to a pumping station, where it discharges into Deptford Creek, at a point about 400 feet north of the London and Greenwich Railway.

Horseferry Road (Greenwich).

Commences in Caroline Street and Roan Street, and proceeds along Union and Bridge Streets, and discharges into the river Thames at Horseferry.

SCHEDULE (E.)

Form of Mortgage of Rates.

Mortgage, Number ( ).

By virtue of an Act passed in the —— year of the reign of Queen Victoria, intituled [*here insert the title of this Act*], the Metropolitan Board of Works, *or* the Board of Works for the district of ——, *or* the vestry of the parish of —— (*as the case may be*), in consideration of the sum of —— paid to —— by *A. B.*, of ——, for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, all [*here describe the monies or rates to be mortgaged*], to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of ——, with interest at the rate of —— per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared that the said principal sum shall

be repaid on the —— day of ——, and that in the meantime the interest thereof shall be paid on the —— day of —— and the —— day of —— in every year.

In witness whereof the Metropolitan Board of Works, *or* the said district board, *or* the said vestry (*as the case may be*), have hereunto set their seal, this —— day of ——, one thousand eight hundred and ——.

SCHEDULE (F.)

Form of Transfer of Mortgage.

I, *A. B.* of —— in consideration of the sum of —— pounds paid to me by *C. D.* of ——, do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, number ——, bearing date the —— day of ——, and made by the Metropolitan Board of Works, *or* the Board of Works for the district of ——, *or* the vestry of the parish of ——, for securing the sum of —— and interest [*or, if such transfer be by indorsement on the mortgage, insert, instead of the words after "assigns,"* the within security], and all my property, right, and interest in and to the money thereby secured, and in and to the monies thereby assigned. In witness whereof I have hereunto set my hand and seal, this —— day of ——, one thousand eight hundred and ——.

A. B. (L. S.)

19 & 20 VICT. CAP. 112.

AN ACT

TO AMEND THE ACT OF THE LAST SESSION OF PARLIAMENT, CHAPTER ONE HUNDRED AND TWENTY, FOR THE BETTER LOCAL MANAGEMENT OF THE METROPOLIS.

29TH JULY, 1856.

WHEREAS it is expedient to amend the Act of the last session of parliament, chapter one hundred and twenty, "for the better Local Management of the Metropolis," as hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows: 18 & 19 Vict. c. 120.

I. Where at the time of the passing of the said Act the power of making church rates or rates of the nature of church rates in any parish was vested in any open vestry, or in any meeting in the nature of an open vestry meeting, or in any meeting of the parishioners, inhabitants, or ratepayers generally, or of such of the parishioners, inhabitants, or ratepayers as were rated at or above any specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power shall not be deemed to have become vested in the vestry constituted in such parish under the said Act, but shall be exercised as if the said Act had not been passed: Pro- Church rates where made in open vestry before passing of the Act 18 & 19 Vict. c. 120, to continue to be so made.

vided always, that this Act shall not affect any such rate made before the passing thereof by any such vestry as last aforesaid.

Nothing in this Act or in 18 & 19 Vict. c. 120, to affect ecclesiastical districts.

II. Nothing in the said Act or this Act shall affect or be deemed to have affected any power of electing or appointing churchwardens or making church rates, or other power which, at the time of the passing of the said Act, was vested in any such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district (by whatever denomination distinguished) created for ecclesiastical purposes only.

Other powers of vestries and like meetings declared to have been transferred to vestries under Act 18 & 19 Vict. c. 120, except powers transferred to district boards (*a*).

III. Save as hereinbefore otherwise provided, all the duties, powers, and privileges (including such as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor,) which might have been performed or exercised by any open or elected or other vestry or any such meeting as aforesaid in any parish, under any local Act or otherwise, at the time of the passing of the said Act of the last session, shall be deemed to have become transferred to and vested in the vestry constituted by such last-mentioned Act; except so far as any such duties, powers, or privileges may in the case of a parish included in any district mentioned

(*a*) These "duties, powers, and privileges" relate to the same matters as the "duties, powers, and authorities" mentioned in the original Act, the 18 & 19 Vict. c. 120, s. 90, and do not apply to the right of presentation to a church vested in trustees in trust for the parishioners and inhabitants; *Carter* v. *Cropley*, 26 L. J. (N. S.) Ch. 246; nor to the right of electing almspeople to a charity vested by the deed of foundation in the minister, churchwardens, overseers of the poor, and such of the parishioners as should pay taxation to the poor, and should not keep inmates or poor lodgers; *Attorney-General* v. *The Drapers' Company*, 22 J. P. 514; (Kindersley V. C.) 27 L. J. (N. S.) Ch. 542. See as to appointment of trustees of a charity by the vestry, constituted by Metropolis Local Management Act, *Re Hayles's Estate*, 31 L. J. (N. S.) Ch. 612. This enactment has not repealed the proviso in the 197th section of the 18 & 19 Vict. c. 120, excepting from the operation of the Act accounts subject to the audit of an auditor,

in schedule (B.) to the said Act be vested by section ninety thereof in the board of works of such district: Provided that all duties and powers relating to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said Act were vested in or might be exercised by any guardians, governors, trustees, or commissioners, or any body, other than any open or elected or other vestry, or any such meeting as hereinbefore mentioned, shall continue vested in and be exercised by such guardians, governors, trustees, or commissioners, or other body as aforesaid (*b*).

Occupiers may claim to be rated.

IV. It shall be lawful for any person occupying any tenement within any parish to claim to be rated to the relief of the poor in respect thereof in the rate for the time being, and in all rates to be thereafter made in respect of such tenement, whether the landlord be or be not liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, by notice in writing left at the office or place of residence of the overseers of the poor of the parish, or one of them, and actually paying or tendering at such office or place of

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under the 4 & 5 Will. 4, c. 76. See *R.* v. *Directors of Poor of St. Pancras*, 27 L. J. M. C. 281.

(*b*) The power of making poor rates, originally possessed by the vestry of Spitalfields under local Acts, does not fall within this proviso. This is a declaratory Act adverting to the former Act (18 & 19 Vict. c. 120, s. 8), and declaring that it was the intention of the legislature to transfer these powers to the new vestry; *Vaughan* v. *Imray*, 28 L. J. (N. S.) M. C. 78. See *R.* v. *Rendle*, 30 L. J. (N. S.) M. C. 135, as to transfer to new vestry of power of appointing governors and directors of the poor for the parish of St. John, Southwark. The exceptions in this proviso do not empower the ecclesiastical commissioners to contravene the provisions of the 18 & 19 Vict. c. 120, s. 143, and to erect a church beyond the regular line of buildings in a street; *Ecclesiastical Commissioners* v. *Vestry of Clerkenwell*, 25 J. P. 580. See 25 & 26 Vict. c. 102, s. 115, *post*, transferring to the vestry the duties, &c., vested under a local Act in the committee of management of the affairs of the parish of St. Paul, Covent Garden.

residence the full amount of the last made rate then payable in respect of such premises, such overseers are hereby required to put the name of such occupier on the rate for the time being, and also, without further claim, to put his name upon every subsequent rate made during the time such occupier continues in the occupation of the same premises; and in case the said overseers neglect or refuse so to do, such occupier shall nevertheless, for the purposes of the said Act, be deemed to have been rated to the said rate in respect of such premises from the period at which the rate for the time being in respect of which he so claimed to be rated as aforesaid was made, and thenceforth so long as he continues in the occupation of the same premises: Provided always, that every person so claiming as aforesaid shall in respect of every rate for the relief of the poor made after such claim as aforesaid, while he continues to occupy the same premises, be liable to the same extent and in the same manner as if his name had been put on such rate.

Compositions not to be disturbed, and landlord's liability not to be affected (*c*).

V. Provided also, that in cases where, by any composition with the landlord, a less sum is payable than the full amount of rate which, except for such composition, would be due in respect of the same premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such composition: Provided also, that where, by virtue of any Act of parliament, the landlord is liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but in case the tenant who has been rated for such premises in consequence of any such claim as aforesaid make default in the payment of the rate for the relief of the poor payable in respect thereof, such landlord shall be and remain liable (*d*) for

(*c*) As to compositions by landlords, see 59 Geo. 3, c. 12, and 13 & 14 Vict. c. 99. Many of the local Acts of parishes contain special provisions with regard to compositions.

(*d*) Before the landlord can be proceeded against the rate must have been demanded of the tenant.

the payment thereof, in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

Right of occupier so claiming to vote in elections (*e*).

VI. Any occupier who under this Act is rated or deemed to be rated to the relief of the poor in any parish, and has been so rated or deemed to be rated for one year next before any election of vestrymen or auditors under the said Act, shall be entitled to vote in such election, and shall for the purposes of the said Act be deemed a ratepayer of such parish, and be entitled to act as such, provided all parochial (*f*) rates, taxes, and assessments, save and except church rates (*g*), due in respect of the same premises at the time of his so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting, have been paid; but such occupier shall not be deemed to be a ratepayer so as to gain a settlement where he would not have gained a settlement if this Act had not been passed.

Payment of church rates not necessary as a qualification (*h*).

VII. The provision in section sixteen of the said Act requiring all parochial rates, taxes, and assessments (except as therein excepted) to have been paid shall not be taken to include church rates.

Rental to be determined by column headed

VIII. And whereas by the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter ninety-six, "to regulate Parochial As-

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(*e*) See 16th and following sections of that Act as to mode of proceeding at elections of vestrymen and auditors.

(*f*) In *Palmer* v. *Earith*, 14 M. & W. 428, it was decided that a tenant who consented to pay all parochial and parliamentary taxes, was not bound to pay a sewers rate. The rate in that case was one made by commissioners under an ordinary sewers commission; but the rate made by vestries or overseers, under the Metropolis Local Management Act, is clearly a parochial rate.

(*g*) See next section.

(*h*) See *Tozer* v. *Child*, cited in note (*a*) to sect. 15 of 18 & 19 Vict. c. 120, *ante*.

"Rateable Value."

sessments," it is required that every rate for the relief of the poor shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to that Act annexed, so far as the same can be ascertained, and in the form in the said schedule are two columns headed respectively "Gross estimated Rental" and "Rateable Value:" and whereas by the said Act of the last session it is required that in order to qualify a person to be elected a vestryman or auditor he should be rated to the relief of the poor upon a rental of such amount as therein mentioned: and whereas doubts (*t*) are entertained which of the amounts specified in the said two columns is to be deemed the "Rental" for the purposes of the last-mentioned Act:

The amount specified in the said column headed "Rateable Value" shall be deemed the "Rental" for the purposes of the last-mentioned Act.

Regulation of meetings of vestries constituted by 18 & 19 Vict. c. 120.

IX. Every meeting of any vestry constituted by the said Act of the last session, of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting through the post or otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing at the same time notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be

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(*t*) See questions raised as to which rental was required by the 6th section of 18 & 19 Vict. c. 120, in *R.* v. *Churchwardens of Lambeth*, 19 J. P. 277; and *R.* v. *St. Mary, Lambeth*, 20 J. P. 277.

necessary that notice of any such meeting shall be further or otherwise signed or published.

Section 144 of 18 & 19 Vict. c. 120, declared to extend to authorize applications to parliament for providing parks, &c.(*k*)

X. And whereas doubts are entertained whether the provision in section one hundred and forty-four of the said Act of the last session, authorizing the metropolitan board of works, where it appears to them that further powers are required for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof, to make applications to parliament for that purpose, and providing that the expenses of such application may be defrayed as other expenses of the said board, extends to authorize applications to parliament by such board for powers for providing parks, pleasure grounds, places of recreation, and open spaces, and it is expedient to remove such doubts: the powers given to the said board to make applications to parliament, and the provision for the expenses of such application, extend respectively to applications to parliament for the purpose of providing parks, pleasure grounds, places of recreation, and open spaces for the improvement of the metropolis or the public benefit of the inhabitants thereof, and to the expenses of all such applications.

District boards and vestries empowered to take ground to be maintained as an open space or pleasure ground (*l*).

XI. Any district board or vestry may take, by agreement or gift, any land or any right or easement in or over land, for any estate or interest therein, and on such terms and conditions as they may think fit, for the purpose of such land being either kept as an open space or being kept and maintained as a pleasure ground for the

(*k*) The metropolitan board are empowered under the enactment referred to, to make, widen, or improve any streets, roads, or ways for facilitating the passage and traffic between different parts of the metropolis; and to make applications to parliament for such further powers as they may deem necessary, for the purpose of any work for the improvement of the metropolis or public benefit of the inhabitants thereof.

(*l*) See the powers given to vestries and district boards by

public benefit of the inhabitants of the district or parish; but this enactment shall not authorize any expenditure to be defrayed by rates, except for the purpose of enclosing, maintaining, planting, and otherwise improving the same.

Recited Act and this Act to be as one.

XII. The said Act of the last session and this Act shall be construed together as one Act.

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the 72nd section of the 25 & 26 Vict. c. 102, *post*, for improving streets, &c., with the previous consent of the metropolitan board of works; and the 73rd section, extending to the metropolis generally certain powers for regulating and improving streets conferred by the 57 Geo. 3, c. 29.

21 & 22 VICT. CAP. 104.

AN ACT

TO ALTER AND AMEND THE METROPOLIS LOCAL MANAGEMENT ACT (1855), AND TO EXTEND THE POWERS OF THE METROPOLITAN BOARD OF WORKS FOR THE PURIFICATION OF THE THAMES AND THE MAIN DRAINAGE OF THE METROPOLIS.

2ND AUGUST, 1858.

WHEREAS it is necessary, with a view to the health of the metropolis, that works should be speedily undertaken and completed for the purification of the Thames and for the improvement of the drainage of the metropolis, and for this purpose it is expedient that the Act of the session holden in the eighteenth and nineteenth years, of Her Majesty, "for the better local Management of the Metropolis," should be amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows: 18 & 19 Vict. c. 120.

I. The metropolitan board shall cause to be commenced as soon as may be after the passing of this Act, and to be carried on and completed with all convenient speed according to such plan as to them may seem proper, the The metropolitan board of works to commence sewerage works as soon as may be (a).

(a) The original powers for constructing works of main drainage were contained in the 135th section of the 18 & 19 Vict. c. 120 (*ante*), by which the board were commanded to make such sewers and works as they might think necessary for pre-

necessary sewers and works for the improvement of the main drainage of the metropolis, and for preventing, as

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venting all or any part of the sewage within the metropolis from flowing or passing into the Thames in or near the metropolis; and they were required to complete such works before the 31st December, 1860. The 186th section of the same Act required that before any plan should be carried into effect it should have been approved by the commissioners of Her Majesty's works and public buildings. The present Act removes those restrictions, and provides that the board may execute the necessary works according to such plan as to them may seem proper; and it repeals the provision by which the approbation of the commissioners of works was rendered necessary before the plan could be carried into effect. It also alters that direction in the original Act requiring the execution of works for preventing the sewage from flowing or passing into the Thames *in* or *near* the metropolis, and authorizes the board to carry out works for preventing, as far as may be practicable, the sewage of the metropolis from passing into the Thames *within* the metropolis. Further, it gives the board additional powers for constructing works under the bed banks and shores of the Thames for the purposes of the Act, and it extends the period for the completion of the works to the 31st December, 1863. The plan of the main drainage, which was prepared by the engineer of the board, M. Bazalgette, with whom had been associated Messrs. Bidder and Hawksley, civil engineers, had been fully matured previously to the passing of the Act, and the first portion of the works was commenced on the 31st January, 1859. The works consist of a system of intercepting sewers on either side of the Thames, making a total length of 82½ miles, comprising on the north of the river a high level, middle level, low level, and outfall sewer, between Hammersmith to the west and Barking to the east. South of the Thames the works consist of a high level, low level, and outfall sewer, extending from Putney to the final point of discharge in Erith marshes. In designing the system, recourse was had, as far as possible, to gravitation, but where that mode of drainage was impracticable, artificial outfalls, by means of pumping machinery, were resorted to. The works are designed for taking off the ordinary rainfall of a drainage area of 117 square miles, and the sewage and refuse waters of a prospective population of three millions and a half, and for affording efficient outfalls for the lowlying districts which have been long in need of deeper channels of drainage. On their completion the open sewers existing in different parts of the metropolis will be diverted and closed up.

far as may be practicable, the sewage (*b*) of the metropolis from passing into the river Thames within the metropolis.

Metropolitan board may construct works on the shores and bed of the Thames.

II. The metropolitan board of works, for the purposes of this Act, may construct (*c*) any work through, along, over, or under the bed and soil and banks and shores of the river Thames, making compensation to all persons having any interest in any wharfs, jetties, or other property damaged by such works, as provided by the said Act of the eighteenth and nineteenth years of Her Majesty in respect of property injured (*d*) under the powers of such Act.

Powers of taking land to apply for the purpose of deodorizing works.

III. The powers of taking land given by the said Act of the eighteenth and nineteenth years of Her Majesty (*e*) and all other powers in such Act and this Act in relation to sewerage works, shall extend and be applicable as well to works for deodorizing sewage as to all other works under this Act, either within or beyond the limits of the metropolis (*f*), and all such works shall

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(*b*) See definition of the word "sewage" in sect. 32, *post*.

(*c*) This is a new power, no such authority having been conferred by the 135th sect. of the 18 & 19 Vict. c. 120, and previously to the exercise of it the works must, under sect. 27, have been approved by the admiralty; *Brownlow* v. *Metropolitan Board of Works and another*, 31 L. J. (N. S.) C. P. 140. The 28th section, *post*, also requires the previous approval of the conservators of the Thames. See also 25 & 26 Vict. c. 93, s. 18, *post*, Appendix, as to previous approval of admiralty in the case of certain works connected with the Thames embankment.

(*d*) The 135th sect. of 18 & 19 Vict. c. 120, *ante*, gives compensation "for any *damage* done thereby" by the operations described, and the determination and recovery of such compensations are provided for by the 225th section of the same Act.

(*e*) See ss. 150, 151, 152, 153, and 225 of 18 & 19 Vict. c. 120, *ante*.

(*f*) The 135th sect. of 18 & 19 Vict. c. 120, empowers the board to carry their sewers and works through any turnpike road, street, &c. as well *beyond* as *within* the limits of the metropolis.

be deemed works for the purpose of the sewerage or drainage of the metropolis (*g*).

Metropolitan board of works may (before 1865) raise the sum of three millions by bonds or debentures (*h*).

IV. The metropolitan board of works may, with the consent of the commissioners of Her Majesty's treasury, from time to time after the passing of this Act, but not later than the 31st day of December, 1864, borrow on such bonds, debentures, or other securities, and at such rate of interest, and upon such terms as to the time of repayment and otherwise, as such commissioners may approve, any sum or sums of money not exceeding in the whole the sum of 3,000,000*l.* for the purposes of this Act (*i*).

Power to raise money for repayment of principal monies.

V. Upon or for the repayment of the principal money secured under the authority of this Act, or any part of such money, the said metropolitan board may, with such consent as aforesaid, at any time borrow on such bonds, debentures, or other securities as aforesaid all or any part of the amount of principal money repaid or to be repaid, and so from time to time as all or any part of any principal money for the time being secured under this Act may require to be repaid; but the amount to

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(*g*) The works for which the 18 & 19 Vict. c. 120, authorizes the taking of lands *compulsorily* are for preventing sewage, &c. from passing into the Thames within the specified limits "or otherwise *for the purpose of the sewerage or drainage of the metropolis.*"—Sect. 152.

(*h*) The board entered into a contract with the Bank of England on the 21st April, 1859, to which the lords commissioners of the treasury were consenting parties in conformity with the Act. It provided that the Bank should advance to the board 3,000,000*l.* between the date of the agreement and the 31st December, 1864, and that repayment should be made by annual instalments, the produce of the main drainage rate of 3*d.* in the 1*l.* on the metropolis assessed on the county rate basis, after providing for the interest on bonds; the Bank accepting as security for their advances bonds issued by the board, guaranteed by the lords commissioners of the treasury, and bearing interest at the rate of 3¼ per cent.

(*i*) See 25 & 26 Vict. c. 102, ss. 1 & 2, *post*, applying portions of the monies borrowed under this Act to other purposes there specified.

be secured by new securities shall not in any case exceed the principal money required to be repaid.

The treasury may guarantee payment of monies borrowed.

VI. It shall be lawful for the commissioners of Her Majesty's treasury to guarantee the payment of the principal and interest of any money borrowed under this Act, and all bonds, debentures, and securities issued under this Act, the payment of the principal and interest secured whereby is intended to be so guaranteed, shall be signed by such officer as the commissioners of Her Majesty's treasury may in this behalf from time to time appoint.

Securities transferable by delivery.

VII. All bonds, debentures, and securities issued under the authority of this Act, and all right to and in respect of the principal monies secured thereby, and all interest due and accruing thereon, shall be transferable by the delivery of such bonds, debentures, and securities respectively.

Money borrowed under this Act to be applied only to works under this Act.

VIII. The metropolitan board of works shall cause a separate account to be kept of the money borrowed by such board under this Act, and all such money, except money borrowed for repayments as hereinbefore provided, shall be employed in payment of the expenses of and incidental to the works to be executed under this Act, and to no other purpose; and the auditor appointed by the secretary of state shall, upon his audit of the accounts of the said board in every year, cause a separate abstract and statement to be prepared of the receipt and expenditure of the said board under this Act, which shall be laid before parliament as directed concerning his other abstracts and statements (*k*).

Appointment of inspecting engineers.

IX. It shall be lawful for the commissioners of Her Majesty's treasury from time to time to appoint an engineer or engineers to inspect the works to be con-

(*k*) See as to audit, 18 & 19 Vict. c. 120, ss. 195, 196, *ante*, p. 154, *et seq.*

structed under this Act, and to report to such commissioners in relation to the expenditure thereon; and such engineer or engineers shall have full power and authority at all reasonable times to enter upon such works, and survey and inspect the same, and to inspect the accounts of the said metropolitan board in relation thereto, for the purpose of reporting as aforesaid.

Metropolitan board of works to levy a rate of threepence in the pound on the property in the metropolis.

X. The metropolitan board of works shall during forty years from the time of the passing of this Act assess and cause to be raised in each year, upon the city of London and the other parts of the metropolis, for the purposes of this Act, such sums as, in their judgment, will be equivalent to a rate of threepence in the pound upon the annual value of the property in the said city and other parts respectively, estimated according to the estimate or basis on which the county rate is assessed, or according to a like estimate; and the sums to be so assessed in each year may be assessed at one time or at several times, as the said board may think fit.

Such rate to be called "the metropolis main drainage rate."

XI. In the assessments of the said metropolitan board under this Act, and in their precepts, and in the orders of vestries and district boards to be made in respect of such assessments, such sums shall be distinguished as being assessed for "the metropolis main drainage rate," and all such sums assessed upon the city of London shall be reimbursed to the chamberlain of the said city by means of a separate rate to be called "the metropolis main drainage rate," to be levied under the direction of the commissioners of sewers of the said city, in like manner and subject to the like provisions as any rate which such commissioners are authorized to direct to be made under any Act relating to the sewerage of the said city (*a*), and all such sums assessed on other parts of the metropolis shall be levied by means of a separate rate to be called "the metropolis main drainage rate," in like

(*a*) These rates are raised under the City of London Sewers Act, 1848, 11 & 12 Vict. c. 163, s. 168, *et seq.*

manner and subject to the like provisions as the sewers rate to be made under the said Act of the eighteenth and nineteenth years of Her Majesty (*b*); and the assessments of the said metropolitan board under this Act shall include the places mentioned in schedule (C.) to the said Act of the eighteenth and nineteenth years of Her Majesty, and the sums to be assessed thereon shall be raised by means of rates (*c*) to be made and levied as therein provided in respect of the raising of monies assessed by the said board.

All parts of the metropolis to be deemed to be equally benefited.

XII. For the purposes of the assessments under this Act, all the parts of the metropolis shall be deemed to be equally benefited by the expenditure under this Act (*d*).

Assessments and precepts may be according to form in schedule.

XIII. The assessments to be made by the metropolitan board of works, and the precepts for obtaining payment of any monies assessed thereby, may be according to the forms contained in the schedule to this Act or to the like effect.

Provisions applicable to other assessments of the metropolitan board to be extended to assessments under this Act (*e*).

XIV. All the provisions of the said Act concerning the estimate on which assessments by the said metropolitan board shall be made, and for and in relation to the assessing, raising, and enforcing payment of the sums assessed by the said board, shall, subject to the provisions of this Act, extend and apply to and in the case of all sums to be assessed by the said board under this Act;

(*b*) See 18 & 19 Vict. c. 120, ss. 170, 171, & 174, and s. 161, *et seq.*

(*c*) See now s. 12 of 25 and 26 Vict. c. 102, *post*, directing these sums to be raised by precept.

(*d*) The 170th sect. of 18 & 19 Vict. c. 120, *ante*, requires that the board should have regard in works of drainage to the "benefit derived from such expenditure by the several parts of the metropolis affected thereby." The principle introduced by this enactment has, by the 5th section of the 25 & 26 Vict. c. 102, *post*, been extended to the general assessments of the board, which are henceforward to be made on the rateable value of the property only.

(*e*) See note (*b*), *supra*.

provided that the metropolis main drainage rate, and the sums assessed or raised for or in respect thereof, shall not be subject to any mortgage or security made or to be made by the metropolitan board of works, other than securities under this Act; but, save as aforesaid, the powers of borrowing and of assessing and rating vested in the said board before the passing of this Act shall not be prejudiced or affected by this Act.

Rates to be made by metropolitan board on default of vestries, &c. in payment of precepts (*f*).

XV. The said metropolitan board may, in case of any default or neglect of any vestry, district board, or other body or person to pay the amount required by any precept of the said board, or any part of such amount, within such time and in such manner as may be mentioned in such precept in that behalf, raise and levy the money required by the said board for the purposes of this Act in any parish, district, or part, and for that purpose may make and levy a rate of such amount in the pound on the annual value of the property rateable as will, in their judgment, having regard to all circumstances, be sufficient to raise the money so required as aforesaid; and such rate shall be levied on the persons and in respect of the property by law rateable to the relief of the poor in such parish, district, or part, subject to the provisions in the said Act of the eighteenth and nineteenth years of Her Majesty contained concerning the levying of monies by overseers in pursuance of orders made upon them by vestries under the said Act, and shall be assessed upon the net annual value of such property ascertained by the rate for the time being for the relief of the poor; and the said board may appoint one or more collectors for levying any such rate, and pay him or them any salary, poundage, or allowance in

(*f*) This provision applies to a default of any vestry, &c., to pay a precept for the metropolis main drainage rate only, the proceedings for default in payment of the ordinary precepts being still required to be taken under the 168th section of the 18 & 10 Vict. c. 120, by which the rate must be made by the persons appointed, and not by the board itself.

respect of their employment under this enactment which such board may deem just and reasonable, and shall take such security from every such collector for the due execution of his duty as they shall think reasonable and proper; and the said board, and the collector or collectors to be appointed by them, shall have the same powers, remedies, and privileges as for levying money for the relief of the poor; and all such rates shall be allowed in the same manner, and be subject to the same provisions in relation to appeal and to excusing persons from payment on account of poverty and otherwise, as the rate for the relief of the poor; and all the expenses of and incidental to the preparing, making, collecting, and levying any such rate shall be raised and levied by the said metropolitan board in addition to but as part of the said rate; and after deduction by the said board of the expenses, all monies levied or received under or in respect of the said rate shall be paid by the said board into the Bank of England to the same account and for the same purposes as hereinafter mentioned concerning monies payable under the precepts of the said board in respect of the metropolis main drainage rate; provided also, that the provisions of sections one hundred and sixty-three, one hundred and sixty-four, and one hundred and sixty-nine of the said Act of the eighteenth and nineteenth years of Her present Majesty shall be applicable to every rate under this Act.

Extension of provisions as to inspection, &c. of county rates to other rates and taxes (*g*).

XVI. The provisions of section one hundred and seventy-one of the said Act of the eighteenth and nineteenth years of Her Majesty, for enabling the clerk or other person or persons authorized by the metropolitan board of works to inspect or take copies of or extracts from county rates, bases, returns, and other documents, and the penalties by the said enactment prescribed in the

(*g*) See now 25 & 26 Vict. c. 102, s. 15, *post*, enabling metropolitan boards and vestries and district boards to demand copies of poor and other rates.

case of neglect or refusal to permit any such clerk or person to inspect or to take copies or extracts, are hereby extended and made applicable to all other rates and assessments, whether parochial or otherwise, within the several parts of the metropolis, and the books in which the same are contained, and the valuations and returns relating thereto, and the person or persons having the custody or control thereof.

Metropolitan board may require to be furnished with copies of poor rates.

XVII. It shall be lawful for the said board, by order in writing, to require the vestry clerk, overseer, collector, or other person having the custody or control of any rate for the relief of the poor in any parish or place, to furnish within such period, not being less than seven days, as shall be limited in such order, or of such part or parts of the said rate as shall be specified in such order, on payment or tender for such copy at the rate of 6*d.* for every twenty-four names (inclusive of all the particulars in the several columns of the rate, so far as such particulars have reference to such names respectively); and the said copy shall be examined by and signed by such vestry clerk, overseer, collector, or other person, and shall be verified by his solemn declaration, if the said board shall require the same, which solemn declaration any justice of the peace, or commissioner duly authorized, is hereby authorized to administer; and any person having the custody or control of such rate who shall refuse or neglect to make and deliver to the said board, or any person by them authorized to receive the same, such copy or extract, or to make such solemn declaration as aforesaid, shall be liable to a penalty not exceeding 10*l.* for every such offence, and to a further continuing penalty of 10*l.* for each and every day during which the said offence shall be continued.

Monies arising from the rate to be paid into a separate account in the

XVIII. An account shall be opened in the books of the governor and company of the Bank of England for the purposes of this Act, in the names of such officers or persons as the commissioners of Her Majesty's Treasury

may direct, and such account shall be deemed a public account, and all the monies payable under the precepts of the metropolitan board of works in respect of the metropolis main drainage rate shall be paid into the Bank of England to such account, and the dividends and income arising from the investments of any such monies under this Act, and the produce of the sale from time to time of such investments, and all monies borrowed for repayment, until applied for that purpose, shall be paid into the Bank of England to the said account. Bank of England.

XIX. All monies paid to the credit of the said account shall be from time to time applied in payment of the interest of the monies borrowed under this Act, and subject thereto in or towards payment of any monies so borrowed which for the time being may be payable, or the purchase of bonds, debentures, or securities whereby any such monies are secured, for the purpose of the extinction thereof; and any surplus, after answering the purposes aforesaid, shall be invested in government securities in such manner as the commissioners of the treasury may think fit and direct, and such investments shall be sold when and as the said commissioners of the treasury may direct. Application of monies paid into the Bank of England.

XX. Provided always, that the commissioners of Her Majesty's treasury may authorize any money standing to the credit of the said account in the Bank of England, not exceeding in the whole the amount remaining to be raised of the said sum of three million pounds, to be paid to the metropolitan board of works, to be applied as any money to be raised by loan under this Act is applicable: in such case the amount which would otherwise have remained raisable under this Act shall be reduced by the sum or sums so authorized to be paid to the metropolitan board of works as aforesaid. Monies arising from rates may be applied in lieu of money to be raised by loan.

Payment in pursuance of guarantee.

XXI. For the purpose of giving effect to such guarantee as herein provided, it shall be lawful for the commissioners of Her Majesty's Treasury to cause to be issued out of the consolidated fund of the United Kingdom, or the growing produce thereof, such sums as may be necessary for payment of such principal and interest as may from time to time be payable in aid of any other monies applicable for that purpose under this Act; and in case any principal or interest payable under this Act shall be paid out of the said consolidated fund, such commissioners shall cause any money so paid to be repaid to the said consolidated fund out of any monies which may have arisen or may arise from the rates levied under this Act or the investment thereof.

The rate under this Act may be determined when the money borrowed is repaid.

XXII. If the whole amount raisable under this Act shall have been raised and paid off by means of the rates levied under this Act before the expiration of the said period of forty years, the metropolitan board of works, with the consent of the commissioners of Her Majesty's Treasury, shall discontinue the assessment for "the metropolis main drainage rate;" and any surplus of the monies arising from the rates levied under this Act which may remain after such payment shall be applicable towards defraying the expenses of the said board.

Metropolitan board to deodorize sewage, and defray expenses as under 18 & 19 Vict. c. 120.

XXIII. The metropolitan board of works, in the meantime and until the works required by this Act for the purification of the river Thames are completed, may do all such works and apply all such means as they may deem proper for deodorizing such sewage (*a*) or otherwise protecting the public health from any injurious

(*a*) The word "such" refers to the sewage of the metropolis mentioned in the 1st section. The works of deodorization referred to in this proviso are of a temporary character only, and the cost of them is to be defrayed, not out of the main drainage rate, but out of the monies raised under the ordinary assessments of the board.

consequences therefrom, and may defray the expenses incurred for this purpose as the expenses incurred by the said board under the said Act of the eighteenth and nineteenth years of Her Majesty are therein directed to be defrayed.

Board to execute works so as not to create a nuisance (*b*).

XXIV. The said metropolitan board shall cause all works to be executed under this Act to be constructed and kept so as not to be a nuisance, and shall, in deodorizing any sewage, and in disposing of any sewage or refuse from sewers, act in such manner as not to create a nuisance.

Enactments requiring the approbation of the commissioners of works, &c. repealed.

XXV. Section one hundred and thirty-six of the said Act, and so much of section one hundred and forty-four of the said Act as provides "that before the metropolitan board of works commence any such works the estimated expense whereof shall exceed fifty thousand pounds, the plan of such works, together with an estimate of the cost of carrying the same into execution, shall be submitted by such board to the commissioners of Her Majesty's works and public buildings, and no such plan shall be carried into effect until the same has been approved by such commissioners, and no such works shall be commenced in cases where the estimated expense thereof shall exceed the sum of one hundred thousand pounds, without the previous sanction of parliament," shall be repealed.

Time for completion of works extended to end of 1863.

XXVI. The time limited by section one hundred and thirty-five of the said Act of the eighteenth and nineteenth years of Her Majesty, for the completion of the

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(*b*) See the provision contained in sect. 31, empowering the secretary of state to direct a prosecution in case of nuisance. This enactment does not take away the ordinary remedies in case of nuisance. See *Sutton* v. *Mayor of Norwich*, 27 L. J. (N. S.) Ch. 739; *Attorney-General* v. *Town Council of Birmingham*, 22 J. P. 561.

sewers and works necessary for preventing the sewage of the metropolis from passing into the river Thames in or near (*c*) the metropolis, shall be extended to the thirty-first day of December one thousand eight hundred and sixty-three (*d*).

Works, &c. to be approved of by admiralty.

XXVII. No works upon the bed or shores of the said river Thames below high-water mark which may interfere with the navigation of that river shall at any time be commenced or executed under the provisions of this Act without the same having been previously approved (*e*) of by the lord high admiral, or the commissioners for executing the office of lord high admiral, such approval to be from time to time specified in writing under the hand of the secretary to the admiralty.

Works upon shore of the river Thames to be approved by the conservators of the river Thames.

XXVIII. In order to preserve the navigation of the river Thames, the plans of any work to be constructed under the authority of this Act upon the banks, bed, or shore of the river Thames, which may interfere with the free navigation of the said river, shall be approved by the conservators of the river Thames, in writing signed by their secretary, before such works are commenced, certifying that the works according to such plans will not interfere with the navigation of the river Thames.

(*c*) The description of the main drainage works is that given by the 135th section of the 18 & 19 Vict. c. 120, instead of that contained in the 1st section of the Act, which substitutes the word "within" for the words "in or near." See the 26th section of the 25 & 26 Vict. c. 102, *post*, by which the extension of time is declared applicable to the works as described by this Act.

(*d*) A further extension of time will become indispensable, as a portion of the low-level sewer will have to be carried in a line of the embankment sanctioned by the Act 25 & 26 Vict. c. 93, passed towards the close of the last session of parliament. See the Act, Appendix, *post*.

(*e*) See note to sect. 2, as to effect of an omission to obtain this approval.

Saving rights of the conservators of the river Thames (*f*).

XXIX. Nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the rights of the conservators of the river Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the said conservators did or might lawfully claim, use, or exercise, so far as such rights, power, authority, or jurisdiction may be exercised for preserving the free navigation of the river Thames.

Regulation of works under or over the river Lea.

XXX. No works under or over the main navigable channel of the river Lea shall at any time be commenced or executed under the provisions of this Act without leaving the top of any work under the navigation not less than twelve feet below high water, Trinity standard, and for any work over any part of the navigation without leaving the soffit of such work not less than eight feet six inches above high water, Trinity standard, with a clear span over the said river, inclusive of the towing path thereof, of not less than fifty-four feet; provided that it shall be lawful for the trustees of the river Lea, by writing under their common seal, on the application of the metropolitan board of works, to consent to an alteration or variation of the said dimensions or either of them.

On complaint of nuisance committed in

XXXI. It shall be lawful for one of Her Majesty's principal secretaries of state, at his discretion, on representation or complaint made to him of any nuisance

(*f*) See the Act 20 & 21 Vict. c. 147, appointing conservators of the Thames, and vesting in them, with certain exceptions, all the estate of the corporation and the Crown in the bed and soil of the river. The conservancy of the Thames was by various charters and Acts of parliament placed under the superintendence of the corporation of London, who claimed to have the property in the soil. See authorities cited in *Pulling*, Laws, Customs, &c., of the City and Port of London, c. 19. See the preamble to the Conservancy Act above referred to. That Act is of a public and not of a private nature; *Brown* v. *Mayor, &c. of London*, 31 L. J. (N. S.) Ch. 280.

execution of works, secretary of state may order prosecution (*g*).

committed in execution of any works, or in deodorizing any sewage, or in disposing of any sewage or refuse from sewers, or in any other manner under this Act, to cause inquiry to be made into the matter represented or complained of to him, and to direct such prosecution or prosecutions, or to take such other proceedings as he may think fit, in order to ensure the prevention or abatement of such nuisance as aforesaid.

Interpretation of terms.

XXXII. In the construction of this Act the expression "deodorize" shall be deemed to include any process whereby the solid suspended matters in sewage may be precipitated or separated from the liquid before the discharge thereof, or whereby the noxious or offensive properties of sewage may be neutralized; and the expression "sewage" shall mean and include the contents of the sewers before the employment of such process.

Recited Act and this Act to be as one.

XXXIII. The said Act of the eighteenth and nineteenth years of Her Majesty and this Act shall be read together as one Act.

(*g*) The intervention of the secretary of state seems to be confined to the operations of the metropolitan board under this Act, and in cases within it the provision would authorize an indictment or an application for an injunction. The nuisance must, however, have actually arisen.

SCHEDULE (A.)

Form of Assessment by Metropolitan Board of Works.

An assessment by the metropolitan board of works in exercise of the powers vested in such board by the Act of the nineteenth year of Queen Victoria, for the better local management of the metropolis, and by the other Acts for amending the same, upon the city of London and the other parts of the metropolis, for the "Metropolis Main Drainage Rate," of the sums hereinafter specified, such sums being in the judgment of the said board equivalent to a rate of 3*d.* in the pound upon the annual value of the property in the said city and other parts respectively, estimated according to the estimate or basis on which the county rate is assessed, or according to a like estimate:—

Parish, District, or Part.	Sums assessed.
	£
City of London - - - -	
Parish of St. Marylebone - - -	

SCHEDULE (B.)

Form of Precept by Metropolitan Board of Works.

To the vestry of the parish of ——.

By virtue of an Act passed in the nineteenth year of Queen Victoria, for the better local management of the

metropolis, and the several Acts amending the same, the metropolitan board of works do issue this their precept, under their common seal, to you the said vestry, and do hereby require you to pay, on or before the —— day of ——, into the Bank of England, to the credit of the account standing in the books of the governor and company of the said bank in the names of ——, the same being persons duly appointed by the commissioners of Her Majesty's Treasury in this behalf, the sum of ——, assessed by the said board upon the said parish for the "Metropolis Main Drainage Rate."

Dated this —— day of ——.

(L.S.)

25 & 26 VICT. CAP. 102.

AN ACT

TO AMEND THE METROPOLIS LOCAL MANAGEMENT ACTS.

7TH AUGUST, 1862.

WHEREAS an Act was passed in the session of parliament holden in the eighteenth and nineteenth years of the reign of Her present Majesty Queen Victoria, intituled "An Act for the better Local Management of the Metropolis:" and whereas the said Act was amended by a certain other Act passed in the session holden in the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and twelve, and was further amended, and certain further and other provisions were made, by another Act passed in the session holden in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter one hundred and four: and whereas it is expedient further to amend the said first-mentioned Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

18 & 19 Vict. c. 120.

19 & 20 Vict. c. 112.

21 & 22 Vict. c. 104.

Debt in respect of Counters Creek Works, and part of debt in respect of Ravensbourne works, re-distributed and made payable out of monies borrowed on the security of the main drainage rate (*a*).

I. Whereas the metropolitan commissioners of sewers, in exercise of the powers conferred upon them by the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter one hundred and twelve, did cause to be prepared and did approve of certain plans for the main drainage and sewage interception of the metropolis, and certain sewers and works included in and forming a portion of the plans so prepared and approved were constructed and completed by the said commissioners or by the metropolitan board of works; that is to say, the sewers and works known as the Counters Creek Diversion Works: and whereas the cost of the

(*a*) The 181st section of the Metropolis Local Management Act (18 & 19 Vict. c. 120), *ante*, continues the debts and liabilities of the metropolitan commissioners of sewers a charge upon those districts or parts in which rates would have been levied to meet them in case that Act had continued in force, and directs that the sums becoming payable under or required for payment of such debts and liabilities should be raised in like manner as the expenses of the board in the execution of that Act; and with respect to districts or parts beyond the limits of the metropolis as defined by the same Act, it directs that precepts shall be issued to the overseers of the parishes in which any part within the limits of the parts is comprised requiring payment of the sums necessary to be raised in such part. The debts enumerated in the first schedule to this Act were charged by the metropolitan commissioners of sewers previously to the determination of the commission on certain sewerage districts or levels included within the limits subject to their jurisdiction. These districts or levels were formed with regard to the fall of the ground, the main lines of sewers, and other natural conditions; and they had no reference to the division according to parishes and districts forming the basis of the Metropolis Local Management Act. As the monies required for payment of the former debts had, under the provisions of the last-named Act, to be raised in parishes or parts of parishes, it became necessary that the metropolitan board should apportion those debts among the parishes and parts of parishes constituting the former sewerage districts or levels. This they did in the proportion of the rateable value of the property in the respective parishes and parts of parishes, and except so far as concerns that portion of the debts referred to in schedule (A.) to this Act, which is dealt with by this section, the distribution or apportionment so made by the board is

said works, amounting to the sum of 43,721*l.* 15*s.*, was defrayed by monies borrowed on certain securities, which securities and monies are included amongst and form part of the securities and monies enumerated in schedule (A.) to this Act, and the debt incurred in respect thereof was charged by the said commissioners upon the following sewerage districts; viz. the Counters Creek, Ranelagh, and Fulham and Hammersmith districts, in certain shares and proportions, and has been apportioned by the

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still in force. The reapportionment directed by this section is not to affect the validity of any precepts already issued. The bill for amending the Metropolis Local Management Acts, when first introduced by the metropolitan board, contained a clause by which it was intended to redistribute certain other portions of the debts included in the schedule referred to, and to alter the amounts charged upon certain parishes and parts of parishes. The principle on which the board proposed to proceed was to apportion the debts according to the benefit actually conferred upon parishes, &c., by the works in respect of which they were contracted, so far as it could then be ascertained by an investigation of their locality, nature, and cost. The special committee of the House of Commons which sat upon the bill, having had conflicting evidence before them, were not satisfied of the propriety of the proposed reapportionment, and the clause was ultimately excluded from the bill. The present section deals specially with two sums, one of 43,721*l.* 15*s.*, the cost of the Counters Creek works, and the other 10,000*l.*, a portion of the cost of the Ravensbourne works; and regarding them as having been designed and executed to the extent expressed in the clause as for the benefit, not of particular localities, but of the metropolis at large, it directs that the debts incurred on account of them shall be discharged out of the monies raised under the Main Drainage Act (21 & 22 Vict. c. 104) instead of continuing them a charge on individual districts. Some of the parishes mentioned in the clause are without the limits of the metropolis as at present defined, *i. e. Willesden*, *Acton*, *Ealing*, and *Chiswick*. See the limits of the metropolitan commission in note (*e*) to sect. 145 of 18 & 19 Vict. c. 120, *ante*, p. 106. With respect to these, as well as to the other parishes enumerated, the 5th section of this Act empowers the board to make assessments in respect of unpaid balances of former precepts. The sums, therefore, which may ultimately be found to stand to the credit of particular parishes or parts, will, under the concluding words of the clause, go in reduction of some future assessment.

metropolitan board of works, pursuant to the 181st section of the firstly-recited Act, among the several parishes or parts of parishes which heretofore constituted the said districts, that is to say, Paddington, Chelsea, St. Mary Abbott's, Kensington, St. Margaret and St. John the Evangelist, Westminster, Hammersmith, Fulham, Willesden, St. Marylebone, St. George Hanover Square, St. John, Hampstead, Acton, Ealing, and Chiswick: and whereas it is just and expedient that the cost of and incidental to the construction and execution of the said sewers and works, amounting to the sum aforesaid, should be deemed to be part of the expenses of and incidental to the works which the said metropolitan board are by the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four, empowered and directed to construct and execute for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the river Thames within the metropolis: and whereas certain other works were executed by the said commissioners, known as the Ravensbourne works, and the cost of such works, amounting to the sum of 26,545*l.* 16*s.* 5*d.*, was defrayed out of monies borrowed on certain securities, which securities and monies are included amongst and form part of the securities and monies enumerated in the said schedule (A.) to this Act, and the debt incurred in respect thereof was charged by the said commissioners upon the following sewerage districts, viz., the Ravensbourne and Greenwich districts, in certain shares and proportions, and has been apportioned by the said metropolitan board of works, pursuant to the said firstly-recited Act, among the several parishes and places or parts of parishes and places which heretofore constituted the said districts; that is to say, St. Paul Deptford, Greenwich, Kidbrooke, Lewisham, Camberwell, Charlton, Eltham, and Lee: and whereas the last-mentioned works partly enure to the benefit of the

metropolis at large, and it is just and expedient that a portion of the costs and charges thereof, amounting to the sum of 10,000*l.*, should be deemed to be part of the said expenses of and incidental to the works which the said metropolitan board are empowered and directed to construct and execute under the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four: be it therefore enacted, that the debts incurred in respect of the costs and charges of the said Counters Creek diversion works, amounting to the said sum of 43,721*l.* 15*s.*, and in respect of the said portion of the costs and charges of the said Ravensbourne works, amounting to the said sum of 10,000*l.*, making together the sum of 53,721*l.* 15*s.*, shall cease to be the special debts and obligations of the said parishes and places and parts of parishes and places, and the same shall be deemed to have become, on the 1st day of January, 1856, transferred to and charged upon and shall stand charged upon the metropolis at large, as defined by the said firstly-recited Act, including the said parishes and places and parts of parishes and places comprised within the limits thereof; and all sums becoming payable under or required for the payment of any security given for the monies so borrowed to the extent of the said sums of 43,721*l.* 15*s.*, and 10,000*l.*, or of any interest due or to accrue thereon, shall be paid by the said metropolitan board of works out of any monies which they may have already borrowed and raised or may hereafter borrow and raise on the security of the assessments or rates made or to be made by them for the metropolis main drainage rate under the provisions of the said Act of the twenty-first and twenty-second Victoria, chapter one hundred and four; and the said board shall take an account between the parishes, places, and parts aforesaid originally charged with the said debts and obligations and the metropolis at large to which the same are hereby transferred, and shall reimburse or give credit to the said

parishes, places, and parts for any sums which may have been overpaid by them or any of them on account of principal or interest in respect of the said sums of 43,721*l.* 15*s.* and 10,000*l.* respectively (if any), since the 1st day of January, 1856, beyond the sums which would have been due from them or any of them if the transfer and apportionment hereby directed had been in force on the 1st day of January, 1856, and the said board shall place any such excess to the credit of such parishes, places, or parts, in reduction of their next or some future ordinary assessment upon such parishes or parts, for defraying their expenses in the execution of the firstly recited Act.

Application of part of monies raised on security of metropolis main drainage rate to repayment of sums expended on Victoria-street sewer since 1st Jan. 1856 (*b*).

II. And whereas at certain times between the 1st day of January, 1856, and the passing of this Act, certain works were executed by the said metropolitan board of works for the reparation and reconstruction of portions of one of the main sewers of the metropolis known as the Victoria Street sewer, and the expenses of and incidental to the execution of the said works were charged by the said board on certain parishes in the metropolis, which were heretofore included in the separate sewerage districts, known as the eastern division of the Westminster sewers, the western division of the

(*b*) The length of sewer referred to in this section will ultimately form a part of the main intercepting drainage works now in course of execution, and the enactment treats the expenses incurred in its reparation and reconstruction as expenses of and incidental to the main drainage works authorized by the 21 & 22 Vict. c. 104. This expenditure, unlike that referred to in the first section, is not the subject of any *debt* or *liability* for which future provision requires to be made; and the enactment merely directs that the board shall, out of the monies raised on the credit of the metropolis main drainage rate under the last-mentioned Act, replace such monies as they have taken from their general funds for payment of those expenses, and in those cases in which monies have been actually raised for payment of any of such expenses in any of the parishes specified, that those parishes shall be reimbursed and receive credit for such amounts in future assessments.

Westminster sewers, and the Regent Street and Regent's Park district, in certain shares and proportions, and were paid by the said board partly out of their general funds and partly by monies raised in some of the said parishes: and whereas that portion of the said sewer in respect of which the said works of reconstruction and reparation were executed, will be incorporated with and form part of the main drainage works now in course of execution by the said board, under the provisions of the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four, and will enure to the benefit of the metropolis at large, and the costs and charges of executing the same ought to be borne by the metropolis at large instead of by individual parishes: Be it therefore enacted, that the expenses of and incidental to the execution of the said works of reparation and reconstruction so executed by the said board between the 1st day of January, 1856, and the passing of this Act, shall be deemed to be part of the expenses of and incidental to the main drainage works which the said board are empowered to construct and execute under the said Acts of the eighteenth and nineteenth Victoria, chapter one hundred and twenty, and the twenty-first and twenty-second Victoria, chapter one hundred and four; and the said board shall, out of the monies borrowed and raised or to be borrowed and raised by them for the metropolis main drainage rate under the provisions of the said Act of the twenty-first and twenty-second Victoria, chapter one hundred and four, replace the said monies taken from the general funds of the said board for the payment aforesaid, and reimburse the monies which the said parishes or any of them may have paid towards the said works of reparation and reconstruction between the 1st day of January, 1856, and the passing of this Act; and the said monies so to be applied in reimbursing the said parishes shall be retained by the said board, and shall be carried to the credit of the said parishes, in

reduction, so far as the same will extend, of the next or some future assessment upon such parishes by the said board for their expenses in the execution of the firstly recited Act.

Parishes, parts, and places on which debt on loan from the Clergy Mutual Assurance Society stands charged (*c*).

III. And whereas the said metropolitan commissioners of sewers did, in exercise of the powers vested in them by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, borrow and take up at interest from a certain society known as the Clergy Mutual Assurance Society, on the security of certain rates authorized to be levied under the last-mentioned Act, the sum of 140,000*l.*, and there was previous to the 1st of November, 1860, due and owing to the said society from the metropolitan board of works, as the successors of the said metropolitan commissioners of sewers, in respect of the said loan, the sum of 105,000*l.*, and it is expedient accurately to ascertain and determine the several parishes, parts, and places on which the debt in respect of the said sum of 105,000*l.* shall stand charged, and on which monies or rates are to be raised or levied for the payment of the principal and interest in respect of the same, and to ascertain and determine the proportions charged upon each: Be it

(*c*) This sum was originally raised by the metropolitan commissioners of sewers for the purposes of main drainage, under the provisions contained in the 11 & 12 Vict. c. 112, s. 106, empowering them to borrow on the credit of all or any of the rates authorized to be raised under that Act. The money having been borrowed for main drainage was unexpended at the determination of the sewers commission. The commissioners did not, as in the case of their other mortgage debts, charge it on individual districts. A special fund having been created for the construction of the main drainage works, these monies were applied to the ordinary exigencies of the parishes and districts, and the enactment gives legislative sanction to that arrangement. In consequence of the difference between the limits of the sewers commission and the metropolis as now defined, it became necessary to ascertain and determine the parishes in which monies for payment of principal and interest should be raised.

therefore enacted, that the said debt of 105,000*l.* shall be and stand charged upon and apportioned to the several parishes, parts, and places enumerated in schedule (B.) to this Act, in the several proportions specified in such schedule, and the said several parishes, parts, and places shall be deemed to be and shall be liable to the payment of the sums set against their respective names therein, and to the payment of interest thereon, and the monies from time to time becoming payable under the said security, or required for or towards payment of the said debt or any part thereof, and the interest thereon, shall be raised by such board upon such parishes, parts, and places respectively in manner provided in respect of the expenses of such board in the execution of the firstly-recited Act: Provided always, that credit shall be given for any sums paid off in respect of the said loan previous to the passing of this Act according to the several proportions specified in the said schedule.

Saving rights and remedies of persons holding securities(*d*).

IV. Provided, that nothing in this Act contained shall prejudice, abridge, diminish, or affect the priority (*e*) secured by the firstly-recited Act to the persons respectively entitled to the mortgages, annuities, securities, and debts referred to in the one hundred and eighty-

(*d*) This preserves the remedies of the mortgagees against the districts named in the original securities granted under the Sewers Acts, some of which, as already stated, were without the limits of the metropolis as now defined.

(*e*) The 181st section of the 18 & 19 Vict. c. 120, preserves such priority among the several mortgagees, &c., as they were, at the passing of that Act, entitled to under the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, or any Act continuing or amending such Act. By the 106th section of the latter Act, mortgagees were entitled to be repaid the sums due to them without any preference by reason of priority; but by a subsequent Act, 17 & 18 Vict. c. 111, s. 4 (now expired), priority was given to all securities on the rates granted before a certain date, over and in preference to the mortgages or annuities under securities subsequent to that date; and subject to that priority all future mortgagees or annuitants were to come in *pari passu*.

first section of that Act, and the first, second, (*f*) and third sections of this Act, or the right of any or either of such persons to require and enforce payment of any principal or interest thereon, or in respect thereof, in, from, or out of all or any of the districts, assessments, rates, or monies liable to such payment under or by virtue of their respective mortgages or securities; but all the securities, rights, and remedies of such persons respectively shall remain as good, ample, and effectual, to all intents and purposes, as if this Act had not been passed: provided also, that nothing herein contained shall prejudice or affect the power vested in the said metropolitan board under the firstly recited Act to borrow monies for paying off former securities.

Sums to be assessed by metropolitan board.

V. From and after the passing of this Act the one hundred and seventieth section of the firstly recited Act is hereby repealed; and in lieu thereof be it enacted, that the metropolitan board of works shall from time to time ascertain and assess upon the several parts of the metropolis the several sums which, having regard to the annual rateable value (*g*) of the property in such

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(*f*) This is a mistake, the word "second" having originally referred to a provision ultimately struck out, and it has been retained by inadvertence. The second section of the present Act has no reference to the mortgage debts in question.

(*g*) The repeal of the 170th section of the former Act, and the re-enactment of its provisions in the present form, get rid of the necessity of assessing the expenses of maintaining *main sewers* on particular sections of the metropolis, on the assumed ground that those parts have been peculiarly benefited by them; and the outlay on main sewers is assimilated to that applicable to the intercepting works, the formation of streets, and other matters within the cognizance of the metropolitan board. The practical effect of the enactment is, that the works of the central board are treated as parts of a comprehensive system, directed to the object of conferring metropolitan and not merely local benefit, and the cost of their maintenance is regarded as being of metropolitan and not of local incidence. This enactment, applying to the gross sums to be raised by the board upon parishes, has no reference to a subject with which it has frequently been confounded, namely, the levying of sewer rates

parts respectively ought to be charged thereon for defraying the expenses of the said board in the execution of the firstly and secondly recited Acts and of this Act, and any such sums may be assessed wholly or in part in respect of expenses incurred or to be incurred, and also in respect of any unpaid balance of any former precept of the said board: Provided always, that such repeal shall not in any respect affect any act, matter, or thing whatsoever done or commenced to be done under or by virtue of the said firstly and secondly recited Acts, or any proceeding taken or to be taken under the thirdly recited Act, or to affect or prejudice, except as herein specially provided, in any way the rights or liabilities of any district or part under the one hundred and eighty-first section of the firstly recited Act, but the same shall be judged of in all respects as if this Act had not been passed.

Basis of assessment.

VI. For the purpose of making any assessment under the preceding section, the board shall estimate the annual value of property according to the estimate or basis on which any county rate in force in any part of the metropolis is made, or, where there is no such county rate, according to a like estimate or basis. (*h*)

Mode of assessment

VII. All such assessments to be made by the metro-

within parishes in detail, and the liabilities of individual occupiers of property as regards exemption from rateability by reason of want of benefit, or on other grounds, which liabilities will be determined as heretofore. Before this Act, the 21 & 22 Vict. c. 104 (Main Drainage Act), had already sanctioned a departure from the principle established by the repealed section, and enacted that for the purpose of the assessments under that Act, all parts of the metropolis should be deemed to be equally benefited by the expenditure under it.

(*h*) That is, according to any estimate founded on the criterion established by the County Rate Act, viz., the full and fair annual value of the property rateable to the relief of the poor. The county rate has been objected to, but it ought to be, and there seems no valid reason why it should not be, a fair and equitable impost. If inequalities exist in the county rate, they should be set right on appeal, or by means of the periodical revision made by the magistrates.

by the metropolitan board of works (*a*).

politan board of works shall be assessed and charged by the said board upon the same basis and in the same manner as the county rate is assessed and charged by the justices under the statutes in force for assessing and charging county rates in England and Wales: Provided always, that all precepts shall be issued and rates levied by the said board in manner directed by the several recited Acts relating to the better local management of the metropolis and by this Act, so far as relates to making precepts and levying rates.

Assessments and precepts of metropolitan board may be according to forms in schedule (C.)

VIII. The assessment of any monies to be assessed by the metropolitan board of works for the expenses of executing the firstly and secondly recited Acts and this Act, and the precepts for obtaining payment of monies required by the board for that purpose, may be according to the forms contained in schedule (C.) to this Act, or to the like effect.

Any vestry or district board may pay precept of metropolitan board out of any money in their possession, and reimburse themselves out of sewer rate (*b*).

IX. The vestry of any parish mentioned in schedule (A.) to the firstly recited Act, or the board of works for any district to whom any precept of the metropolitan board shall be directed, may, if they shall see fit, pay to the person or body authorized by the said metropolitan board to receive the same the sum required by such precept, within such time as may be therein mentioned, out of any monies in their possession at the time of their re-

(*a*) This seems to carry the matter no further than the preceding section, which enacts that the assessments of the board shall be made on the county rate basis; nor is it probable that the words "in the same manner," whatever may have been intended by them, will enable the board to exercise any original jurisdiction in the preparation of that basis, or alter it as the justices are empowered to do under the Acts relating to county rates. With respect to the latter part of the section, it is proper to observe that the *rates* for payment of the precepts of the metropolitan board are made by the vestries and district boards, and not by the former body.

(*b*) This provision is intended to empower the vestry to pay out of monies in hand, without incurring the delay of

ceiving such precept, or which may come into their hands at any time within two calendar months next after the service thereof; and all payments so made by any vestry or district board shall be charged by them against and reimbursed to them out of the monies which the said vestry or district board shall and which they are hereby required to raise and collect by virtue of such precept.

Vestries may include in the sewers rate precepts of metropolitan board.

X. Where by any local Act of parliament, the poor rate in any parish in schedules (A.) or (B.) to the firstly recited Act is made by the vestry of such parish at a fixed period or periods in every year, it shall be lawful for such vestry, at their discretion, to include in the sewers rate for their parish such sum or sums of money as they may consider necessary to meet any precepts received or to be received from the metropolitan board of works during the period for which such poor rate extends, to defray the expenses of the said board in the execution of the said first-recited Act; and at the time of making such poor rate, also to make a separate rate for the metropolis main drainage, to meet the precept received or to be received from the metropolitan board of works for the sum assessed for such rate during the year, such rates to be levied in the same manner, for the same period, upon the same persons, and to be subject to the like provisions as the sewers rate by the first recited Act, and to be contained in the same book or books as the poor rate of the said parish, but distinguishing the title of each of the said separate rates or assessments, and to be collected quarterly or otherwise by such person or persons as shall be appointed by the said vestry to receive and collect the same: Provided that nothing herein contained shall prevent the said metropolitan board of works from requiring payment, or relieve the vestry of

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making and collecting rates, which would arise from a strict compliance with the directions contained in the 174th section of the 18 & 19 Vict. c. 120, and the provisions incorporated with it.

any parish from the payment, of the sums assessed by such board at such times as they are now entitled by precept to require the same. (*c*)

Sums collected in places in schedule (C.) to 18 & 19 Vict. c. 120, beyond amount of rate for main drainage rate, &c., to be placed to credit of such places (*d*).

XI. Where, under or by virtue of any rate or assessment made by an assessor appointed by the said metropolitan board of works, for the metropolis main drainage rate, any monies shall have been or shall be collected in any place mentioned in schedule (C.) to the firstly recited Act beyond the amount required to satisfy the amount of the assessment of the said board upon the said place, and the expenses of and incidental to the preparing, making, collecting, and levying such rate or assessment, the excess shall be placed by the said board to the credit of such place, on account of the next assessment upon such place by the said board for the metropolis main drainage rate.

Payment of sums assessed upon places in

XII. For obtaining payment of the sum assessed upon any place mentioned in schedule (C.) to the firstly recited Act for the metropolis main drainage rate, the said board

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(*c*) This proviso saves the right of the metropolitan board to demand payment by a day specified, but practically it is doubtful whether the whole amount will, when the vestry requires payment by instalments, ever be paid till the last of such instalments has been collected. The clauses inserted in the bill as originally introduced into the House of Commons, for enabling the metropolitan board at once to collect the monies assessed in cases in which vestries have expressed a determination not to pay, were struck out; and the metropolitan board will, in such cases, still be subject to the inconvenience of awaiting the expiration of the time fixed by the precept, before they can take any steps for collecting the monies by means of their own assessors.

(*d*) Under the 21 & 22 Vict. c. 104, the balance of monies received in respect of the main drainage rate, after deducting the expenses of collection, must be paid into the Bank of England, and the present clause gives a power to credit the places in schedule (C.) where the assessors of the board have collected more than sufficient to satisfy the rate and expenses of collection. This applies to past collections only, as the next section alters the mode of collecting the main drainage rate in those localities.

shall issue a precept under their seal requiring payment of the amount mentioned in such precept to their treasurer, or into any bank therein mentioned, within such time or times as may be therein limited, and every such precept shall be directed to the masters of the bench, treasurer, governors, or other body or persons having the chief control or authority in any such place; and the body or persons to whom any such precept shall be directed shall raise and levy the money required by the same by means of a separate rate, in like manner and subject to the like provisions as the sewers rate to be made under the provisions of the firstly recited Act and this Act; and the said body or persons may appoint one or more persons to collect any such rate, and may pay him or them such salary, poundage, or allowance as they may deem just and reasonable, and may take such security from every such collector for the due execution of his duty as they shall think reasonable and proper; and the several provisions hereinafter contained with respect to the levying, paying over, and accounting for monies levied by collectors by direction of any vestry shall be applicable to every such collector; and the several enactments with respect to the levying of monies by the said metropolitan board on the default of vestries and district boards shall apply (*f*) in case of a default by the body or persons to whom any such precept may be directed by the said board to levy and pay over the money therein named according to the exigency thereof. said schedule (C) (*e*).

(*e*) This alters the mode prescribed by the 21 & 22 Vict. c. 104, in conjunction with 18 & 19 Vict. c. 120, for levying the main drainage rate on the places included in schedule (C.), by which the metropolitan board were required to appoint assessors; and it assimilates as nearly as may be the mode of levying money in those places to that which prevails in the rest of the metropolis, whereby the board demand a gross amount, which must be collected in detail by the local authorities.

(*f*) See 21 & 22 Vict. c. 104, s. 15, as to the rates to be made by the metropolitan board on default of vestries, &c.

Metropolitan board may amend assessments and precepts where necessary.

XIII. It shall be lawful for the metropolitan board of works, in case of any omission or other inaccuracy in any assessment or precept which they have made or issued, to make such amendments or alterations therein as may render the same conformable to the provisions of the recited Acts and this Act; and it shall be lawful for the said board, should they deem it requisite and proper, to revoke any precept which they may have issued, and to issue another precept in lieu thereof (*g*).

Overseers to pay over and account for monies to vestries and district boards.

XIV. Whenever any vestry or district board shall by their order require the overseers of any parish or place to levy and pay over the sum or sums of money which such vestry or board may require, under the provisions of the said recited Acts or this Act, such overseers shall, within such period after the levying of the said sum or sums or any part thereof as the said vestry or board shall determine, pay over to the treasurer of the said vestry or board, or to any officer, or into any bank in such order mentioned, the amount mentioned in such order, and the excess, if any, which may have been levied beyond such amount, less the expenses of and incidental to the making and collecting of the same, and shall make out and deliver to the said vestry or board a true and perfect account in writing signed by them, and duly audited by the auditors appointed for such parish or place under the provisions of the firstly recited Act, of all monies and rates received by them in pursuance of the said order, and shall for such purpose produce to the said auditors the vouchers, counterfoils, or receipts for all payments made to or by them; and such auditors shall, for the purposes of the said audit, have all and every the powers and authorities given to the auditors named in the 195th section of the firstly recited Act (*h*); and in case any

(*g*) It was very doubtful whether the board under the former Acts had any power to alter a precept after it had been issued.

(*h*) The section referred to professes to give the auditors

overseers shall fail to pay over such monies or rates as aforesaid, or to render such account, or to produce such vouchers, counterfoils, and receipts for the space of twenty-one days after being thereunto required, they shall be subject to the penalties mentioned and contained in the 65th (*i*) section of the firstly recited Act: Provided always, that where the term "overseer" or "overseers" shall extend to and include any vestry elected under the firstly hereinbefore recited Act, or any board of trustees or governors of any parish or place chosen under any local Act now in force, (*k*) the provisions of this clause shall not be applicable to such vestry or board of trustees or governors so long as the orders of the vestry or board shall be duly complied with and satisfied; and in every case in which the vestry does not appoint a collector or collectors to collect such rates, the said overseers are hereby authorized to employ and pay one or more collector or collectors to collect all such rates, and to take from every such collector security (*l*) for his duly collecting such rates, and paying over and accounting for the same, and such security shall enure to the benefit of the overseers for the time being of every such parish or place, who shall have all such and the same remedies thereon as the overseers to whom such security was originally given.

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power to examine, audit, allow, and disallow, but it gives no remedy for the recovery of sums disallowed. That, however, is immaterial to the purposes of the present section, as the subsequent part of it contains effectual provisions for enforcing a due accounting by overseers.

(*i*) By the 65th section, if any officer or servant fail to account, &c., he is to be committed to gaol, there to remain until he shall have rendered a true and perfect account, &c., and if he has failed to pay over monies, and still fail or refuses to do, the money may be levied by distress, and in default of distress, he may be committed for a period not exceeding three months.

(*k*) See definition of word "overseer," in s. 250 of 18 & 19 Vict. c. 120, *ante*, p. 188.

(*l*) As to security for the faithful performance of duty by officers, see note (*l*) to section 65 of 18 & 19 Vict. c. 120, p. 34, *ante*.

Power to metropolitan board, vestries, and district boards to demand to be furnished with copies of poor rate, &c. (*b*).

XV. It shall be lawful for the metropolitan board of works, or for the vestry of any parish mentioned in schedule (A.) to the firstly recited Act, or for any district board, by order in writing, to require the vestry clerk, overseer, collector, or other person having the custody or control of any rate for the relief of the poor in any parish or place, or of any other rate, or of any book containing a copy of any such rate as aforesaid, to furnish, within such period, not being less than seven days, as shall be limited in such order, a true copy of such rate for the relief of the poor, or other rate, or of such copy thereof as aforesaid, or of such part or parts of the same as shall be specified in such order, on payment or tender for such copy at the rate of 6*d.* for every twenty-four names (inclusive of all the particulars in the several columns in the rate, so far as such particulars have reference to such names respectively), and the said copy shall be examined by and signed by such vestry clerk, overseer, collector, or other person, and shall be verified by his solemn declaration, if the said metropolitan board or vestry or district board shall require the same, which solemn declaration any justice of the peace or commissioner duly authorized, is hereby empowered to administer; and any person having the custody or control of such rate, or copy thereof, who shall refuse or neglect to make and deliver to such metropolitan board, vestry, or district board, or any person by them authorized to receive the same, such copy or extract, or to make such solemn declaration as aforesaid, shall be liable to a penalty not exceeding 10*l.* for every such offence, and to a further penalty not exceeding 10*l.* for each and every day during which the said offence shall be

(*b*) The 171st section of the original Act, the 18 & 19 Vict. c. 120, authorized the clerk of the metropolitan board to inspect the county rate and city sewer rate valuations and other accounts, and to take extracts, &c.; and by the 16th section of the 21 & 22 Vict. c. 104 (Main Drainage Act), those provisions are extended to all other rates within the metropolis.

continued, to be recovered by a summary proceeding (*c*).

Expenses incurred by vestries named in schedule (B.) in execution of Acts to be paid by district boards (*d*).

XVI. Whenever the vestry of any parish mentioned in schedule (B.) to the firstly recited Act shall have lawfully incurred any expenses in the execution of the said recited Acts or this Act, the board of works for the district in which such parish may be situate shall, in case the payment of such expenses is not otherwise provided for pay and discharge the amount of such expenses out of the monies which they are by the firstly recited Act authorized to raise for the payment of the expenses of the execution of such Act.

Recovery of monies assessed by metropolitan board on extra-parochial property for payment of debts (*e*).

XVII. The sums from time to time assessed by the metropolitan board of works upon or in respect of any extra-parochial or other property which was included in any separate sewerage district under the metropolitan commission of sewers, for or towards payment of any debt or debts charged upon such district at the determination of the said Act of the eleventh and twelfth Victoria, chapter one hundred and twelve, or of any interest thereon, for the payment of which provision is not otherwise made in the said recited Acts or this Act, shall be paid, on demand, to the said board, by the occupier of the tenements or premises, or by the person or persons in receipt of any tolls or profits issuing out of any incorporeal hereditaments in respect of which such assessment shall be made, and every such sum may be reco-

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(*c*) As to recovery of penalty, see s. 102, *post*.

(*d*) This must apply to expenses other than those specified in the 24th section of the 18 & 19 Vict. c. 120, which are directed to be paid out of the poor rate.

(*e*) The 18 & 19 Vict. c. 120, makes no provision for the recovery of the sums payable in respect of certain extra-parochial property towards the payment of mortgage debts charged on the sewerage districts in which such property was situated, as they could not be included in the rates made by overseers for payment of the precepts issued to vestries and district boards.

vered by the said board by an action at law or by a summary proceeding before a justice at the option of the said board.

One summons only to issue for the recovery of rates (*f*).

XVIII. In any proceedings before any justice or justices, by or on behalf of any vestry, district board, overseer, or collector, against the occupier or owner of any premises, for the recovery of any rates assessed under the said Acts or this Act which may be in arrear, all the rates for the recovery of which such proceedings shall be taken shall be included in the same summons, and the charge for such summons shall not exceed 1*s.*, and the signature of any justice or justices to any such summons may be either in writing or by a stamp affixed as such justice or justices may direct.

Parties lending money to metropolitan board or vestries or district boards not bound to inquire into application of money, regularity of proceedings, &c. (*g*).

XIX. Whereas by the firstly recited Act power is given to the metropolitan board of works and to any district board or vestry to borrow money for the purpose of defraying any expenses incurred by them in the execution of the said Act, on the credit of all or any of the monies or rates authorized to be raised by them under the said Act: Be it enacted, that no corporate body or person or persons lending or proposing to lend money to the said metropolitan board or any vestry or district board, under the provisions of the said Acts or this Act, or of any Act or Acts for amending the same, or of any Act or Acts empowering them or either of them to borrow money, shall be bound to see or obliged to inquire whether the money lent or proposed to be lent is ad-

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(*f*) By the 25 & 26 Vict. c. 82, any number of local rates and taxes due from the same person may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before or issued by justices; and the Act provides that no costs shall be allowed in respect of several complaints, &c. when in the opinion of the justices or court one might have sufficed.

(*g*) A provision similar in effect was contained in the 3rd sect. of the 17 & 18 Vict. c. 125, an Act for continuing and amending the Metropolitan Sewers Act, 1848.

vanced for the purposes of such Acts, nor to see or inquire into the application of the money so lent, or any part thereof; nor shall any such respective body or person or persons be bound or required to ascertain that the board or vestry so borrowing, or the meeting or meetings of such board or vestry, was or were properly constituted or convened, or that the proceedings at any meeting were legal or regular; and the common seal of every such board or vestry impressed upon or affixed, pursuant to the order or resolution of such board or vestry, to any mortgage, bond, or other instrument which may have been made or granted by the said board or vestry, shall be binding and conclusive on the said board or vestry by whom any such mortgage, bond, or other instrument may have been so sealed and executed, and their successors.

Public loans commissioners authorized to lend money to metropolitan board, vestries, &c.

XX. It shall be lawful for the commissioners acting in the execution of the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter seventeen, and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, to make advances to the metropolitan board of works, or to any vestry or district board, upon the security of all or any of the monies or rates to be assessed or levied by them under the said recited Acts or this Act, and without requiring any further or other security than a mortgage of such monies or rates, repayable by such instalments, within a period not exceeding thirty years (*g*), as shall in each case be agreed upon.

Power to stop up carriage or footways, &c.

XXI. It shall be lawful for the said metropolitan board, and they are hereby authorized and empowered, during the construction of any works by them under the recited Acts or this Act, subject to the provisions of

(*g*) This provision as to the period of repayment was not contained in sect. 184 of the 18 & 19 Vict. c. 120, relative to advances by the public loan commissioners.

such Acts (*h*) to cause to be stopped up all or such part of the carriage or footway of any streets, roads, or ways as shall be necessary for the due execution of the said works.

Power to metropolitan board to take lands for roads, &c. (*i*).

XXII. The compulsory powers of taking land given to the said metropolitan board by the firstly recited Act, and the "Lands Clauses Consolidation Act, 1845," shall, subject to the conditions and restrictions in the firstly recited Act contained, extend and be applicable to the taking of any lands which they may require for the purpose of making convenient roads or ways to or in connexion with any sewers or works vested or hereafter to be vested in the said board, or which they may require for making roads or ways during the construction of any sewerage works, or for spoil banks or places of deposit of surplus earth or other materials in the execution of any such works.

Votes exceeding 20,000*l.* to be confirmed.

XXIII. No resolution made or passed after the passing of this Act by the said metropolitan board, authorizing the expenditure upon or the construction of any works, the estimated cost of which shall amount to or exceed the sum of 20,000*l.*, shall be carried into execution or be deemed valid and binding until the same shall have been confirmed at a subsequent meeting of the said board duly (*k*) convened.

Maintenance of bridges, culverts, &c.

XXIV. When the said metropolitan board shall, in

(*h*) See s. 33, *post*, repealing the 157th sect. of the 18 & 19 Vict. c. 120, containing regulations as to breaking up turnpike roads.

(*i*) The Railway Clauses Act, 8 Vict. c. 20, authorising the construction by railway companies of accommodation and subsidiary works, is not incorporated with the Metropolis Local Management Act (18 & 19 Vict. c. 120); and the works specified in the 150th section of that Act for which the board may take land compulsorily do not extend to the purposes mentioned in this section.

(*k*) This probably means convened as a special meeting by a notice specifying its object in the mode prescribed by the 52nd section of the 18 & 19 Vict. c. 120, p. 27, *ante*.

exercise of the powers conferred upon them, have constructed any bridges, culverts, arches, or passages in connexion with any sewers or works, all such bridges, culverts, arches, and passages shall at all times after the construction thereof be maintained at the expense of the said board.

Formation and maintenance of bridges, arches, culverts, &c. (*l*).

XXV. It shall be lawful for the said metropolitan board to make and maintain any bridges, arches, culverts, passages, or roads over, under, or by the sides of or leading to or from any sewerage works constructed or to be constructed by them, which they may deem necessary and convenient for preserving the communications between lands through which the said works may have been or may be made or carried; provided that it shall be lawful for the said board to contract and agree with the owners and occupiers of lands to pay them or any of them compensation in lieu of making or maintaining such bridges or other works.

Time limited for completion of works specified in sect. 1 of 21 & 22 Vict. c. 104 (*m*).

XXVI. The extension of time authorized and directed by the twenty-sixth section of the thirdly recited Act, the twenty-first and twenty-second Victoria, chapter one hundred and four, shall be deemed to apply to the sewers

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(*l*) It has already been stated (see note, s. 22), that the Railway Clauses Consolidation Act not being incorporated with the Metropolis Management Acts, the provisions in it as to the construction and maintenance of accommodation works do not apply. The 24th and this section make express provision on this subject, and remove doubts as to the powers and duties of the board with respect to the application of their funds to works of this description; which doubts have been found prejudicial, both in the execution of works, and in arrangements with landholders. They confer upon the board powers for constructing accommodation works similar to those contained in the 68th section of the Railways Clauses Act, 8 Vict. c. 20. Works of this nature are more especially required in the case of those portions of the main drainage which are carried in an embankment.

(*m*) This section corrects an accidental inaccuracy of expression occurring in the 26th section of the 21st & 22nd Vict. c.

and works mentioned in the first section of that Act for the improvement of the main drainage of the metropolis, and for preventing, as far as may be practicable, the sewage of the metropolis from passing into the Thames within the metropolis.

As to trapping of gullies connected with main sewers.

XXVII. No gully or ventilating shaft immediately connected with or appertaining to, or which hereafter may be immediately connected with or appertain to, any sewer vested in the metropolitan board of works, shall be trapped, covered, or closed up without previous notice in writing being given to the said board, nor if the said board or their engineer within one week after the giving of such notice shall express in writing their or his objection to the same (*a*).

Powers as to sewerage not to be transferred to metropolitan board without consent of that board (*b*).

XXVIII. Notwithstanding the provision contained in the eighty-ninth section to the firstly recited Act, relative to the transfer by vestries and district boards to the metropolitan board of works of their powers and duties in relation to sewerage and drainage, it shall not be lawful for any vestry or district board to transfer to the metropolitan board of works any such powers or duties without the previous consent in writing of the said metropolitan board.

Orders to be made by committee

XXIX. Under the provisions of the two hundred and eleventh and two hundred and twelfth sections of the

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104 (Main Drainage Act), by which the intercepting works are described in the words of the 135th section of the 18th & 19th Vict. c. 120, viz. as works for preventing sewage from passing into the Thames "in or near to the metropolis," instead of "within the metropolis," according to the 1st section of the first-named Act.

(*a*) The 71st section of the original Act, the 18th & 19th Vict. c. 120, vests the absolute power of trapping, &c., in vestries and district boards.

(*b*) The 89th section of the original Act enabled the vestries

firstly recited Act, empowering the committee of appeal of the metropolitan board of works to hear and determine an appeal against any order or act of any vestry or district board, the said committee may allow or dismiss the appeal, or quash or confirm or vary the order appealed against (*c*).

on appeals against acts of vestries and district boards.

XXX. In any case in which the metropolitan commissioners of sewers have incurred any expenses authorized by the Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to be paid by an improvement rate, or as charges for default, it shall be lawful for the committee of appeal appointed under and in pursuance of the two hundred and twelfth section of the firstly recited Act, to levy improvement rates or charges for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act of the eleventh and twelfth years of the reign of Her Majesty, chapter one hundred and twelve, and the said committee shall have all the rights and remedies for the recovery thereof which are vested in the said metropolitan board in that behalf; and if any person liable to the payment of any such improvement rate or charges for default fail to pay the same when due, or for the space of fourteen days after the same shall have been lawfully demanded, the said committee of appeal may

Committee empowered to make improvement rates, &c. for expenses of works of private improvement executed by the commissioners of sewers, and take other proceedings in relation thereto (*d*).

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and district boards to make the transfer without consulting the metropolitan board.

(*c*) The section referred to only enabled the committee to hear and determine appeals, but gave them no power to vary an order appealed against—a course frequently rendered necessary by the requirements of the case.

(*d*) The 182nd section preserves to the board all the rights and remedies of the metropolitan bill, the commissioners of sewers for the recovery of improvement rates, and charges for default, &c. This provision transfers those powers to the committee, a tribunal much more fitted for the investigation of minute details of this nature than the board.

and they are thereby empowered to summon the defaulter to appear before them to show cause why such improvement rate or charges for default so in arrear should not be paid; and in case the defaulter fail to appear according to the exigency of the summons, or if no sufficient cause for non-payment be shown, the said committee may by warrant under the seal of the board cause the amount of such improvement rate or charges for default so in arrear to be levied by distress of the goods and chattels of the defaulter.

Part of sect. 58 of 18 & 19 Vict. c. 120, repealed.

XXXI. So much of section fifty-eight of the said Act of the eighteenth and nineteenth of Victoria as provides that the acts of every committee shall be submitted to the general body of the board or vestry appointing such committee, for their approval, shall be repealed so far as relates to the metropolitan board; and be it enacted in lieu thereof, that the said metropolitan board shall be at liberty to give such instructions to any committee appointed by such board regulating the conduct of any business deputed to such committee, and such committee shall act in conformity therewith, and shall report to the board all acts done by them in conformity with such instructions (*e*).

Communications between sewers in different parishes or

XXXII. Whereas it is in and by the firstly recited Act provided that the metropolitan board of works shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the metro-

(*e*) The language of this section is permissive, and it does not seem to render it compulsory on the board to give any such instructions. It is presumed, then, that when the board have not given instructions, the committee are not bound to report; and as their acts, within the scope of their authority would be final, it would also seem that where the board have given instructions, and the proceedings of the committee have been conformable to such instructions, the board have no power of approval or disapproval, but are merely to receive the report.

polis, make such general or special orders as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, maintenance, and cleansing of sewers in their respective parishes or districts, and for securing the proper connexion and intercommunication of the sewers of the several parishes and districts, and their communications with the main sewers vested in the said metropolitan board, and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage, and all such orders shall be binding upon such vestries and boards: Be it enacted, that whenever the said metropolitan board shall, in exercise of the said power, have ordered that any sewer or sewers vested in the vestry, district board, or other body (*g*) acting for any parish or

Districts, and payment of compensation, &c. in consideration thereof(*f*).

(*f*) This provision enables the metropolitan board to direct the payment of a pecuniary consideration to any body having control over sewers where their works are made use of for the benefit of another parish or district—a power not contained in the original Act, but which seems just and equitable. As the area of the jurisdiction of the respective bodies is parochial only, and not according to natural drainage, occasions for the exercise of this power must frequently arise.

(*g*) These words "other body," as here employed, can only refer to the local board of health of Woolwich, and as the exercise of the power is restricted to parishes and districts named in the schedules, the city of London is excluded from the operation of the clause. The 58th section prohibits the making of any new sewers within the metropolis by *any body* having control over sewers within the metropolis, without the previous approval of the metropolitan board, and the general intention of the Act is to render that board the paramount authority in matters of sewerage, and there seems no good reason why the city sewers should be exempted from this provision. It is worthy of remark, that one of the earliest examples of an arrangement very similar to that contemplated by this clause is presented in the case of a communication between the sewers of the Holborn and Finsbury divisions and those of the Corporation of London. By one of the local Acts of that commission, the 18 Geo. 3, c. 66, in consideration of the benefit accruing to the Finsbury division, St. Leonard, Shoreditch, and Norton Folgate, from the sewers of those localities being permitted to run into the sewers of

place comprised in the schedules of the firstly-recited Act, having control over the sewers in one parish, district, or part, shall, for the purpose of outfall or otherwise, be connected with any sewer or sewers vested in the vestry or district board of another parish, district, or part, or other body having control over the sewers in such parish, district, or part, it shall be lawful for the vestry, district board, or other body, for the drainage of whose parish, district, or part, such connexion shall be required, and at whose instance and request such order shall have been made, to execute all necessary works as well within their own parish, district, or part as within any other parish, district, or part which shall be specified in the said order of the metropolitan board for effecting such connexion: Provided that every communication to be made by any vestry, district board, or other body with any sewer out of their own parish, district, or part shall be made under the supervision and to the satisfaction of the board, vestry, or other body having control over such last-mentioned sewer; and where it shall appear to the said metropolitan board to be equitable and just, under the circumstances of the case, that any vestry, board, or other body so connecting their sewers with the sewers vested in another vestry, district board, or other body should pay such last-mentioned vestry, board, or body any compensation or remuneration, either in one sum or by yearly or other payments, for the use of their sewer, it shall be lawful for the said metropolitan board to order and direct payment of such compensation or remuneration accordingly, and the vestry, board, or other body to whom any such payment shall be directed to be made may recover the same from the vestry, board, or body directed by such order to make such payment, either by

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the city of London, the above-named commissioners were required to pay an annual sum of 150*l.* into the chamber of the city of London for ever. That sum was, it is believed, regularly paid by the Holborn and Finsbury commissioners, and by their successors, the metropolitan commissioners of sewers, to the Corporation down to the year 1855, when it ceased.

action at law or before a justice of the peace in a summary manner.

Regulations as to breaking up turnpike roads (a).

XXXIII. The one hundred and fifty-seventh section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that the metropolitan board of works, and any vestry or district board may, where necessary for the purpose of executing any work authorized by the recited Acts or this Act, open and break up any turnpike road under and subject to the restrictions and provisions hereinafter contained; that is to say, three days' previous notice, with a full description of any intended works, shall be left at the office of the commissioners or trustees of the road, and, except by the permission of the said commissioners or trustees, the traffic of the road shall not at one time be stopped or hindered along more than half of its width, nor, if the half left open be of less than the clear width of fourteen feet, along more than one hundred yards in length, and the party doing the works shall cause all openings in the road to be effectually secured and fenced, and affix and maintain lights during the night near to the place where the ground is open, so as to prevent accidents; and the said commissioners or trustees are hereby absolved from all liability in respect of any accident arising in consequence of such works; and the party doing the work shall re-

(a) The repealed section, 18 & 19 Vict. c. 120, s. 157, vested in turnpike commissioners and trustees powers of an unnecessarily restrictive character, which, if arbitrarily exercised, might have opposed serious obstacles to the efficient and economical execution of drainage works. The alteration introduced by this provision is to substitute a three for a seven days' notice, and altogether to get rid of the former provision prohibiting any alteration, except by permission in the inclination of the road of more than one foot in sixty. Those restrictions are retained in the case of certain turnpike roads in and near the metropolis by the Local Government Act, 21 & 22 Vict. c. 98, s. 43; and some questions may arise as to which regulations are to prevail with respect to the opening, &c. of turnpike roads within the metropolis and within the jurisdiction of a local board of health.

store every road so opened or broken up to its original state as to surface and materials, and, in order to meet the future expenses consequent on the subsidence of materials newly filled in, shall pay to such commissioners or trustees, on demand, such sum as they shall require for such purpose, not exceeding 1*s.* for every superficial square yard, and, so far as the works affect the same, shall make good all drainage, paving of water channels, kerbs, or footpaths, and other matters and things connected with the maintenance of the road, and in default the surveyor of the said commissioners or trustees may cause the necessary work to be done; and in all cases of expense incurred by any such surveyor on the default of the party doing the works, such party shall pay such expense to the commissioners or trustees on demand.

Plan, &c. of works affecting railways or canals to be submitted to companies (*b*).

XXXIV. Where any works authorized by this or the recited Acts will interfere with any railway or canal, the board or vestry proposing to construct such works shall before commencing the same give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice the company shall by writing, addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced; and it shall thereupon be referred to an engineer, to be appointed by the board of trade, on the application of either party, to determine the manner of executing the said works, and the determination come to by such engineer shall be binding on both parties.

(*b*) The case of the *North London Railway Company* v. *The Metropolitan Board of Works*, 28 L. J. (N. S.) Ch. 909, is an authority that, under the 69th and 135th sections of the 18 & 19 Vict. c. 120, boards and vestries might enter private lands without notice in order to construct sewers. This clause restricts that right so far as concerns works interfering with railways and canals, and renders a notice necessary.

XXXV. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively, or, if that be refused, with the consent of the board of trade; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting (*c*) of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption. Line of railway not to be altered.

XXXVI. The inspectors of votes directed to be appointed under the firstly-recited Act for any parish, or, where any parish is divided into wards, for any ward of a parish, may, before commencing the duties of their office under the said Act, appoint by writing under their hands an umpire; and in case the said inspectors shall be unable to agree upon or determine by a majority any matter which they are by the said Act required to determine, such matter shall be decided by the said umpire, and his decision in relation thereto shall be final and conclusive. Inspectors of votes to appoint umpire (*d*).

(*c*) The compensation directed by the 135th section of the original Act, 18 & 19 Vict. c. 120, is for "damage done." The expression "injuriously affecting" is the same as in the 68th section of the Lands Clauses Act, 8 Vict. c. 18. On the subject of compensation, see note (*k*) to sect. 135 of 18 & 19 Vict. c. 120, *ante*.

(*d*) See sect. 16 of the original Act, 18 & 19 Vict. c. 120, as to the nomination of inspectors, and sects. 18, 19, and 22 as to their duties. This section does not seem to make it incumbent upon the inspectors to appoint an umpire. Where they have done so, the umpire's authority attaches when they cannot determine by a majority any question which they are required to determine. It does not appear to enable him to settle a question arising under the 19th section, which is still to be decided by lot.

Vestries and district boards may appoint their days of meeting.

XXXVII. Every vestry and district board (*e*) constituted under the firstly-recited Act, or this Act, may hold their meetings on such days of the week, except Sundays, as they may from time to time determine, notwithstanding any provision to the contrary contained in any local Act; and any business which, by any local or other Act of parliament, or custom, should be done by any such vestry on a certain day, may be done at any meeting of such vestry duly convened for the purpose, and held within seven days next before or after such certain day as aforesaid: provided that where the hour or time for holding such meetings is fixed by the local Act they shall continue to be held at the same hour or time.

Certiorari for auditors' allowances or disallowances.

XXXVIII. Notwithstanding anything in the one hundred and ninety-fifth section of the firstly-recited Act contained to the contrary, if any person aggrieved by any allowance, disallowance, or surcharge by any auditors of the accounts of any vestry or district board require such auditors to state the reasons for the said allowance, disallowance, or surcharge, the auditors shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made (*f*); and it shall be lawful for every person aggrieved by such allowance, disallowance, or surcharge to apply to the court of Queen's Bench for a writ of

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(*e*) The 39th section of the 18 & 19 Vict. c. 120, enables district boards to appoint the time and place of their ordinary meetings. There can be no provision in any local Act affecting *district boards* in this respect, which are entirely the creation of the Metropolis Management Act. The effect of this provision seems to be to enable vestries to hold their ordinary meetings on any day except Sunday; but in the case of business appointed to be done on particular days, that may be done on any day falling within the period here defined, but at the same hour as is now fixed by the local Act.

(*f*) See *certiorari* to remove auditor's disallowance of overseer's accounts, and what grounds for disallowance insufficient, *Reg.* v. *Street*, 16 Jur. 1085.

certiorari to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of the recognizance shall be to prosecute such *certiorari* at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditors or their successors, within one month after the same may be confirmed, their full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditors or their successors, who shall in return to such writ return a copy under the hands of a majority of them of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as they may incur in such defence out of the funds of the vestry or district board respectively interested in the decision of the question, unless the said court make any order to the contrary; and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement and no other; and if it appear to such court that the decision of the said auditors was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same, and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the vestry or district board to which such accounts relate, as to such court may seem fit, which rules of court respectively shall be

enforced in like manner as other rules of the said court are enforceable (*g*).

Provision in case of a vestryman being returned for more than one ward.

XXXIX. If any person be returned to serve in any vestry for more than one ward, he shall on or before the next meeting of the vestry after such election signify in writing to the clerk of such vestry his decision as to the ward which he may desire to represent on such return; and if before or at such meeting he shall refuse or neglect so to do, the vestry shall determine the ward which he shall represent; and the vacancy occasioned by such determination or decision shall be filled up by an election to be held for that purpose within one month from the date of such determination or decision, such elections to be conducted in the like manner as the annual elections of vestrymen.

Elections to be held annually for supplying vacancies occasioned by expiration of term of office.

XL. The thirty-fifth section of the recited Act of the eighteenth and nineteenth Victoria is hereby repealed; and in lieu thereof be it enacted, That the vestry constituted by the said Act in every parish mentioned in the second column of schedule (B.) to the same Act shall, on the first Wednesday in the month of June in the year 1863, and in every subsequent year, elect so many

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(*g*) The effect of this provision is to repeal that part of the 195th section of the 18 & 19 Vict. c. 120, which enacts that the allowance of the auditors shall be final and conclusive. See that section, p. 154, *ante*, which does not contain any provision for recovering surcharges. This section is in substance taken from the 35th section of the 7 & 8 Vict. c. 101, an Act relating to the poor. It does not, however, like that enactment make previous payment by the person surcharged a condition precedent to the right of applying to the Court of Queen's Bench. The Local Government Act, 21 & 22 Vict. c. 98, s. 60, also varies that provision of the Public Health Act, 11 & 12 Vict. c. 63, s. 122, which rendered the auditor's certificate final, and enables the allowance or disallowance to be removed by *certiorari*. For decisions on the auditing of poor rates, see *Reg.* v. *Greene*, 21 L. J. M. C. 137; *Reg.* v. *Great Western Railway Company*, 13 Q. B. 327. *Reg.* v. *Read*, 13 Q. B. 524. *R.* v. *Winsford*, 13 Q. B. 873.

persons (*h*) qualified by rating and occupation, as required by the same Act and the recited Act of the nineteenth and twentieth Victoria to be elected vestrymen of such parish, to be members of the board for the district in which such parish is comprised, as may be necessary for supplying the vacancies among the members of such board elected for such parish occasioned by expiration of the term of office of the members going out of office at the time of such election.

As to division into wards when parish contains two thousand houses (*i*).

XLI. When at any time, upon any account taken of the population by the authority of parliament, any of the parishes within the metropolis not now divided into wards for the purpose of electing vestrymen shall be found to contain more than two thousand rated householders, it shall be lawful for the metropolitan board of works, upon the application in writing of the vestry, or of not less than five hundred rated householders of the parish, to divide such parish into wards, and to determine and set out the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole number of wards shall not exceed eight; and the metropolitan board shall apportion among the several wards the number of vestrymen to

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(*h*) The 35th section requires the persons elected to supply vacancies to be "vestrymen" of the parish. This enables others than vestrymen to be elected, provided they be qualified by rating and occupation, as required by sect. 6 of 18 & 19 Vict. c. 120.

(*i*) The 3rd section of the 18 & 19 Vict. c. 120, *ante*, limited the division into wards to be made under that Act to parishes containing more than two thousand rated householders at the time of the passing of that Act. This enactment provides for the division of a parish into wards where the population has increased since the passing of that Act so as to exceed that limit. The duties entrusted to the metropolitan board by this provision are similar to those imposed upon the persons appointed by the secretary of state under sect. 4 of the 18 & 19 Vict. c. 120, *ante*.

be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in their judgment is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three, and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal secretaries of state for his approval, and also to the vestry clerk of the parish to which such division and apportionment relate; and the said particulars shall, within seven days after such transmission, be published by the said board in the London Gazette; and at the expiration of not less than two calendar months the said secretary of state shall, if he approve of the same, publish the said particulars again with his approval affixed thereto in the London Gazette; but if the said secretary of state disapprove of the proposed division into wards or apportionment of vestrymen, then he shall, subject, however, to all the above limitations, make such other division or apportionment as in his judgment shall be more conducive to a fair representation in the vestry of the interests of the ratepayers of the said parish, and shall publish the particulars of such fairer division and apportionment in the London Gazette, and the parish shall, after such publication by him in the London Gazette, be deemed to be divided into such wards so determined and set out.

No parish shall be annexed without previous notice.

XLII. No representation shall be made under the two hundred and forty-ninth section of the firstly-recited Act, unless and until the metropolitan board of works shall have given to the churchwardens and surveyors of highways of the parish to which such representation relates two months' notice in writing (*a*) under their

(*a*) The two months' notice to the churchwardens and surveyors directed by this section is in addition to the one

common seal of their intention to make such representation and of the provisions which it is intended to propose in such representation; and the said churchwardens and surveyors of highways shall, immediately after receiving such notice as aforesaid, summon a vestry meeting of the parish, and submit such notice to the consideration of the said meeting; and such representation of the said metropolitan board shall be accompanied by a copy of all resolutions or statements that may have been made to the said board in writing by the said churchwardens and surveyors of highways, or either of them, by direction of such vestry meeting.

Annual report of officer of health.

XLIII. The officer or officers of health for each parish or district shall make an annual report (*b*) to the vestry or district board of the sanitary condition of the parish or district, and upon the other matters set forth in the one hundred and thirty-second section of the firstly-recited Act, and it shall not be necessary to append to the annual report of the vestry or district board, to be made in the month of June in each year, a copy of any other report of such officer or officers than such annual report.

Owners and occupiers of land may execute works of

XLIV. It shall be lawful for the owners or occupiers of any land or premises in any parish, district, or part within the limits of the metropolis as defined by the

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month's notice required by the 249th section of the 18 & 19 Vict. c. 120, to be published in the London Gazette.

(*b*) The 198th section of the 18 & 19 Vict. c. 120, directs that vestries and district boards shall append to the annual report of their proceedings, which they are required to send to the metropolitan board of works, a copy of every report which may have been made to them by their medical officers in the course of the past year. This provision dispenses with the necessity of appending a copy of every report made during the year, and renders it sufficient to append one annual report by their medical officers to the report of the vestry.

drainage at their own expense (*c*).

firstly-recited Act, with the consent and subject to the regulations and conditions hereinafter mentioned, to construct sewers at their own expense for the purpose of draining such land or premises; and it shall be lawful for any vestry or district board in whom the sewers in any parish, district, or part are vested, if they shall deem it just and proper so to do, to contribute out of the rates under their control applicable to the execution of works of sewerage to the cost of any sewers constructed for the purpose aforesaid.

(*c*) The intention of the 18 & 19 Vict. c. 120, seems to have been that all sewers should be made by the public bodies having control over sewers; and there is no provision in that Act, with a single exception, making it incumbent on private individuals to construct sewers. That exception is in the cases falling within sect. 86, relating to the filling up of ponds, pools, &c., where the vestry and district boards are empowered to call on the owner or occupier to construct a sewer, if necessary, for the abatement of the nuisance. But they had no power under that Act to call on a party to construct a sewer for the drainage of streets or house property. See *Clarke* v. *Vestry of Paddington*, 5 Jur. (N. S.) 138. The Act in question proceeds upon the principle that all sewers should be constructed at the public expense, and that the public rates are sufficient for that purpose. But under the laws which prevailed before the passing of that Act it was considered the duty of private parties to build sewers for their own property, and notwithstanding the provisions in that Act, such parties have for the most part adhered to their former practice of applying for the sanction of the vestries, &c., to plans of sewers to be built at their own expense. A considerable proportion of the local sewers constructed since that Act came into operation, though nominally the work of the vestries and district boards, were in reality constructed by and at the cost of individuals, and there seems no valid objection to the construction of sewers by such parties under proper supervision and control. The important aid afforded to the rates by contributions from private parties may be gathered from the fact that even since the passing of the Metropolis Local Management Act in 1855, many miles of sewers in the metropolis have been annually constructed by private parties at their own expense. The absence of any positive provision in the Metropolis Local Management Act for compelling the construction of sewers by private parties where land has been newly let for build-

Vestries, &c. to submit plans of new sewers to metropolitan board (*d*).

XLV. Any vestry or district board intending to construct any sewer shall, before commencing any works for that purpose, submit to the metropolitan board of works a plan of the street or place in which it is proposed to construct such sewer, drawn to such a convenient scale or scales as the said metropolitan board shall direct, and there shall be shown on such plan the position, course, and dimensions of the proposed sewer, with a section or sections thereof, and such other particulars in relation thereto as the said metropolitan board shall deem necessary and require, and no such sewer or works shall be proceeded with without the approval in writing or contrary to the directions of the said board.

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ing operations has induced persons to believe that vestries and district boards were compellable by *mandamus* to construct sewers in private streets and roads, and proceedings have in some instances been taken to compel them to do so. See *Reg.* v. *Vestry of St. Luke, Chelsea*, 31 L. J. (N. S.) Q. B. 50, and *ex parte Cramp*, cited in note (*c*) p. 41, *ante*. The power here given to vestries and district boards to contribute to the cost out of the public rates, where the work may benefit a larger district, is a useful one.

(*d*) The clauses from 45 to 51 inclusive embody regulations for the construction of sewers, and ensure the submission of proper plans and particulars before the work can be sanctioned. They also effect a division of labour between the metropolitan and local boards, by which all applications from private parties first come before the latter, and they then communicate with the metropolitan board. These regulations are intended to render that provision of the 69th section of the 18 & 19 Vict. c. 120, effectual, by which the making of new sewers is prohibited without the previous approval of the metropolitan board. Regulations in substance very similar to those embodied in these clauses have been for some time in operation under the byelaws of the metropolitan board; but many of those provisions, however salutary, seem to have been beyond the powers given to that board by the 202nd section of the Act. There is an early precedent for regulations of this nature in the 47 Geo. 3, c. 7, an Act relating to the Westminster commission, by which, previous to the construction of any new sewer intended to communicate with the sewers of the commissioners, notice to those commissioners was necessary, and such sewer was required to be made according to their direction.

Communications with main sewers.

XLVI. Three clear days' notice in writing shall be given to the metropolitan board of works by any vestry or district board previously to the connexion of any sewer or drain with a main sewer; and the necessary junction or communication for that purpose shall be made by such vestry or district board to the satisfaction of the said metropolitan board.

Private parties before branching sewers into main or district sewers to apply for sanction of vestries, &c.

XLVII. Every person other than a vestry or district board intending to make or branch a sewer, either into a sewer vested in the metropolitan board of works, or into a sewer vested in any vestry or district board, shall in the first instance lay the plan and section thereof before, and apply for the sanction of, the vestry or district board of the parish, district, or part in which such last-mentioned sewers shall be situate; and no sewer shall be begun to be made by such person until the sanction in writing of such vestry or district board shall have been obtained.

Vestries, &c. before sanctioning sewers, to apply for approval of metropolitan board.

XLVIII. Before any vestry or district board shall sanction the construction of any such sewer they shall submit the plan and section thereof to the metropolitan board of works for their approval, in the same manner as if such sewer were proposed to be constructed by such vestry or district board; and no vestry or district board shall sanction the construction of any such sewer without the approval in writing of the said metropolitan board first had and obtained.

Seven days notice must be given before drains can be branched into main sewers.

XLIX. All persons intending to make or branch any drain into a sewer vested in the metropolitan board of works shall, seven clear days before commencing any works for that purpose, make written application to the vestry or board of the parish, district, or part in which such sewer shall be situate, accompanied by a plan showing such particulars as may be required by any byelaw or resolution of the said metropolitan board; and no such

work shall be commenced until the sanction in writing of the said vestry or district board shall have been given.

Regulations as to abandonment, alteration, &c., of designs for sewers previously approved.

L. When it shall be desired to abandon either wholly or in part, or to extend, contract, or alter any design for a sewer previously submitted to and approved by the metropolitan board of works, notice in writing of such desire shall be given by the vestry or district board by whom such approval shall have been obtained to the said metropolitan board, accompanied by plans and sections showing the nature of the abandonment, extension, contraction, or alteration desired; and no such abandonment, extension, contraction, or alteration shall be made without the previous approval in writing of the said metropolitan board; and no person other than a vestry or district board shall abandon wholly or in part, or extend, contract, or alter in construction, any sewer approved or sanctioned by the metropolitan board of works, without the previous sanction in writing of the vestry or district board in whose parish or district the works were intended to be executed, to be applied for and given in the same manner as hereinbefore directed with respect to new sewers.

In case sewer be not constructed within 12 months, fresh application to be made(e).

LI. In case any sewer sanctioned and approved by the metropolitan board of works as hereinbefore provided shall not be constructed or executed within twelve calendar months from the date of such sanction or approval, the works for the construction of such sewer shall not be executed without a fresh permission by the metropolitan board, and their written sanction that the necessary works for the construction of such sewer may proceed, to be applied for and obtained in manner hereinbefore provided with respect to the original permission for the construction of such sewer.

(e) There was a byelaw of the Westminster commission which contained a similar provision.

Expense of constructing sewers in new streets and streets laid out since 1st Jan. 1856 (*g*).

LII. Where any sewer shall, after the passing of this Act be constructed by any vestry or district board in or for the drainage of any new street (*f*), or of any house or houses erected since the 1st day of January, 1856, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed by the owners (*h*) of such street or houses, and of the land bounding or abutting on such street respectively, and the said expenses shall be apportioned by the vestry or district board in such proportions as they may deem just, and the amount charged upon or payable in respect of each house or premises shall be payable before the works shall be commenced, during their progress, or after their completion (*i*) as the vestry or district board shall in each case determine, either in one sum or by instalments, within such period not exceeding twenty years, as the vestry or district board shall direct; and any such sum or instalments shall be recoverable from the present or any future owner of the

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(*f*) See definition of the expression "new street," s. 112.

(*g*) This and the following section recognize more directly the obligation of individuals, and they are in accordance with those provisions of former Acts by which private parties were either compellable to make sewers at their own expense, or to contribute to the cost of them. See as to charging a portion of the expenses of arching sewers on occupiers of adjoining lands in the repealed statute relating to the Surrey and Kent sewers commission, 10 & 11 Vict. c. 217; analogous provisions in the repealed statute relating to the Westminster commission, 10 & 11 Vict. c. 70; and the powers of the commissioners under the Metropolitan Sewers Act, 11 & 12 Vict. c. 112, for compelling sewers constructed to be continued, and as to special rates, contributions, &c.

(*h*) See definition of word "owner" in sect. 250 of 18 & 19 Vict. c. 120, *ante*, with which this Act is to be read as one Act; sect. 110, *post*.

(*i*) See a similar provision as to the expenses of paving new street, sect. 77.

said house or premises either by action at law or in a summary manner before a justice of the peace at the option of the vestry or board.

Expense of constructing sewers where there had before been only open sewers.

LIII. Where any sewer shall be constructed by any vestry or district board in a street in which previously to such construction there had been no sewer, or only an open sewer, but where sewers rates have been levied previously to such construction, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed in part only by the owners of the houses situate in and of the land bounding and abutting on such street respectively; and the amount to be borne by such owners shall be determined by the vestry or district board in each particular case, and the residue of such expenses shall be defrayed by the vestry or district board out of the sewers rates levied in their parish or district; and the amount so charged by the vestry or district board upon or in respect of each house or premises shall be payable, either before the works shall be commenced, during their progress, or after their completion, as the vestry or board shall in each case determine, either in one sum or by instalments within such period, not exceeding twenty years, as the vestry or board shall direct; and any such sum or instalment shall be recoverable from the present or any future owner of such house or premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board: Provided that no street or property in respect of which sewers rates have been levied for five years prior to the 1st day of January, 1856, shall be subject to be charged under the provision contained in this section.

Land may be charged in a less propor-

LIV. In apportioning the cost of constructing sewers under the provisions contained in the two last preceding

tion than house property (*k*).

sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, it shall be lawful for any vestry or district board to charge the owners of land bounding or abutting on any street in a less proportion than the owners of house property, should they, under the circumstances of the case, deem it just and expedient so to do.

Where estimated expenses exceed actual cost, difference to be refunded by, and where less to be paid to, vestry, &c. (*l*).

LV. In any case in which the estimated expenses shall exceed the actual cost of constructing sewers under the provisions contained in the said two preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, then the difference between such estimated expenses and the actual cost shall be repaid by the vestry or board to the owners of the houses or premises by whom the amount of any such estimated expenses may have been paid; and in any case in which the estimated expenses shall be less than the actual cost of constructing any sewer or sewers under the provisions aforesaid, then the owners of the said houses or premises shall, on demand, pay to the said vestry or board such further sum of money as, together with any sums already paid, will make up the amount of the actual cost; and the vestry or district board shall have all the same remedies for the recovery of such further sum as are hereinbefore given for recovering any expenses apportioned by vestries or district boards under the said enactments.

Vestry or district board may defray part

LVI. It shall be lawful for the vestry or district board, should they deem it reasonable and just so to do, at their discretion to defray, out of the sewers rates to be levied

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(*k*) See a similar provision with respect to the apportionment of the cost of paving new street, sect. 77, *post*.

(*l*) The provision for repayment of the difference is similar to that contained in the 105th section of 18 & 19 Vict. c. 120, *ante*, with respect to the expenses of paving new streets.

in their parish or district, any portion of the expenses of and incident to the construction of sewers under the provisions contained in the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties.

of expense out of sewer rates (*m*).

LVII. Any person who may deem himself aggrieved by any order or resolution of any vestry or district board in relation to the expenses of constructing works under the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, or the apportionment of such expenses, may appeal to the metropolitan board of works against such order or resolution, subject in all respects to the directions and provisions contained in the 211th section of the firstly-recited Act, and the section of this Act relative to the form of order to be made by the committee of appeal of the metropolitan board of works against orders or acts of vestries or district boards.

Appeal against orders of vestries, &c., as to amount or apportionment of expenses (*n*).

LVIII. Whereas the vestries of the parishes mentioned in sched. (A.) of the firstly-recited Act and district boards are, by the 69th sect. of the said Act, subject to the powers vested in the metropolitan board of works, empowered to make, repair, and maintain sewers vested in them, and to do and perform other works and matters as in the said section is mentioned, and it is expedient to give increased facilities to such vestries and district

Execution of works of sewerage by vestries and district boards beyond the limits of the metropolis (*o*).

(*m*) The 86th section of the 18 & 19 Vict. c. 120, enables vestries, &c., "to defray the whole or a portion of the costs of constructing sewers, &c., for the abatement of nuisances, after default by private parties.

(*n*) The sewers themselves must have been previously sanctioned by the metropolitan board, under sect. 69 of 18 & 19 Vict. c. 120, and 45th and following sections of this Act, and the appeal is limited to the amount of the expenses.

(*o*) There are certain parishes near the external boundary of the metropolis, which, owing to the fall of the ground, can only be drained by means of outfalls traversing districts

boards for the execution and performance of such works and matters: Be it therefore enacted, that whenever it shall be found necessary by the vestry of any parish mentioned in sched. (A.) to the said Act, or by the board of works of any district mentioned in sched. (B.) to the said Act, for the purpose of executing works for any of the purposes mentioned in the said section, to carry any sewer or work beyond the limits of the metropolis as defined by the said Act, it shall be lawful for any such vestry or district board to execute works in parts situate beyond or without such limits, and to cleanse, repair, and maintain such works as they shall from time to time deem necessary: Provided always, that no work shall be performed or commenced by any vestry or district board beyond the limits of the metropolis as above defined, except for the purpose of continuing or forming part of a work commenced or executed within their respective parish or district; nor shall any such works be performed or commenced without the consent in writing of the metropolitan board of works for that purpose first had and obtained, nor without the consent of the vestry or district board, or authorities (*p*), of the parish or place

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situate beyond the metropolitan limits, and much inconvenience has been occasioned by the want of a power similar to that conferred by the present section. The power to carry sewers through lands, *as well beyond as within* the limits of the metropolis, is given by the 135th section of the 18 & 19 Vict. c. 120, to the metropolitan board alone; the words "beyond the limits," being omitted from the 69th section, defining the powers of the latter for the execution of works. It has been held under the Public Health Act, 11 & 12 Vict. c. 63, that the power of local boards to construct sewers is confined to their own limits, and that the 30th section of the Local Government Act, 21 & 22 Vict. c. 98, only enables those boards to go beyond their own district when it is necessary to do so for the purpose of outfall or the distribution of sewage; *Hayward* v. *Lowndes*, 28 L. J. (N. S.) Ch. 400.

(*p*) In the Woolwich district the authority to give or withhold consent would be the local board of health; and elsewhere the surveyors of highways would probably be the parties to whom application should be made.

through which the work may pass; but if any such vestry or district board or authority shall refuse such consent, one of Her Majesty's chief secretaries of state shall have authority under this Act to decide whether such consent ought to be withheld, and such secretary of state may make such order as to him shall seem just; but nothing herein contained shall apply to any work for the purpose of the main drainage of the metropolis under the recited Acts: Provided also, that no new sewer, either within or beyond the limits of the metropolis shall be made or executed by any vestry, district board, or other body (*q*) having control over sewers within the metropolis without the previous approval of the said metropolitan board.

Contribution to cost of main sewers and sewers built since 1st January, 1855, or hereafter to be built (*r*).

LIX. The provisions contained in the eightieth section of the firstly-recited Act, empowering vestries and district boards to order, at their discretion, under the circumstances therein mentioned, such sums as they shall deem just to be paid and contributed by the owners of houses towards the expense of the construction of sewers into which drains from such houses shall be made or branched, shall be extended, and the same are hereby extended and made applicable to the metropolitan board

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(*q*) This provision goes beyond the 18 & 19 Vict. c. 120, which applies to the works of vestries and district boards only. The words here used are large enough to include the commissioners of sewers for the city of London, and are probably meant to apply to them.

(*r*) This is an extension of the provisions contained in the 80th section of the 18 & 19 Vict. c. 120, by which the liability to pay contribution to the cost of the construction of sewers is limited to the case of sewers as built previously to the passing of the Act, and to sewers vested in vestries and district boards, but built at the expense of private individuals. The section as here framed authorizes contribution to the cost of main sewers which have been built at the expense of private parties, and of sewers of every description built since the 1st January, 1856, or which may be hereafter built at the cost of private parties.

of works with respect to houses draining into main sewers constructed at the expense of any person or body other than any commissioners of sewers, and which are vested in the metropolitan board; and the same provisions are hereby extended and made applicable to all sewers within the limits of the metropolis as defined by the firstly-recited Act, built since the 1st day of January, 1856, or which may hereafter be built at the expense of any person or body other than the metropolitan board of works, or any vestry, district board, or other body having control over sewers within the metropolis, into which house drains may be made or branched; and the said metropolitan board, vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding 5*l.* by the hundred by the year, as the said board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner of the said premises either by action at law or before a justice of the peace in a summary manner, at the option of the board or vestry: Provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them by such vestry and district boards respectively under the provisions contained in this Act (*s*).

Where time is given for payment of

LX. In all cases in which time shall be given by the metropolitan board of works, or by any vestry, district

(*s*) This refers to the cost of constructing sewers in new streets, &c., under ss. 52 and 53.

board, or other body, for the payment of any contribution to the cost of a sewer as aforesaid, the metropolitan board of works shall keep a register of all such orders for contribution, which register shall contain the description of the premises, the amounts payable, the periods for payment, and other necessary particulars; and such register shall be open to inspection by parties interested during office hours without payment of fee or reward; and every vestry, district board, or other body giving time for payment of any such contribution as aforesaid shall forthwith transmit to the said metropolitan board a copy of their order or resolution in that behalf made, and such other particulars in relation thereto as the said board may deem necessary and require.

contribution, the metropolitan board shall keep a register (*t*).

LXI. The seventy-seventh section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no person shall make or branch any sewer or drain, or make any opening into any sewer vested in the metropolitan board of works, or in any vestry or district board, without the previous consent in writing of such board or vestry: Provided that it shall be lawful for any person, with such consent, at his own expense, to make or branch any drain into any sewer vested in such board or vestry, or authorized to be made by them or either of them under the firstly-recited Act or this Act, such drain being of such size, materials, and other conditions, and branched into such sewer in such manner and form of communication in all respects, as the board or vestry

Regulations respecting openings into sewers (*u*).

(*t*) The Westminster commissioners, and subsequently the metropolitan commissioners, kept a register showing the sewers constructed at the expense of private parties.

(*u*) The section, as now re-enacted, imposes the condition of a previous application to and written consent by the respective bodies in whom the sewers are vested, and in general gives more efficient control over the execution of the works. It also provides for payment of contribution, and, in addition to the penalties incurred by any infraction of its provisions, the wrongful drainage may be cut off.

of works with respect to houses draining into main sewers constructed at the expense of any person or body other than any commissioners of sewers, and which are vested in the metropolitan board; and the same provisions are hereby extended and made applicable to all sewers within the limits of the metropolis as defined by the firstly-recited Act, built since the 1st day of January, 1856, or which may hereafter be built at the expense of any person or body other than the metropolitan board of works, or any vestry, district board, or other body having control over sewers within the metropolis, into which house drains may be made or branched; and the said metropolitan board, vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding 5*l.* by the hundred by the year, as the said board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner of the said premises either by action at law or before a justice of the peace in a summary manner, at the option of the board or vestry: Provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them by such vestry and district boards respectively under the provisions contained in this Act (*s*).

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board, or other body, for the payment of any contribution to the cost of a sewer as aforesaid, the metropolitan board of works shall keep a register of all such orders for contribution, which register shall contain the description of the premises, the amounts payable, the periods for payment, and other necessary particulars; and such register shall be open to inspection by parties interested during office hours without payment of fee or reward; and every vestry, district board, or other body giving time for payment of any such contribution as aforesaid shall forthwith transmit to the said metropolitan board a copy of their order or resolution in that behalf made, and such other particulars in relation thereto as the said board may deem necessary and require.

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shall direct or appoint (*v*): provided also, that where any contribution to the cost of a sewer is payable in respect of drainage into the same, it shall not be lawful for any person to make or branch any drain into such sewer, except in conformity with the directions of the board or vestry in whom the same shall be vested with respect to payment of contribution under the provisions contained in the firstly-recited Act and this Act in that behalf (*w*); and in case any person, without the consent of the said metropolitan board, district board, or vestry as aforesaid, make or branch, or cause to be made or branched, any sewer or drain, or make any opening into any of the sewers vested in any such board or vestry, or authorized to be made by them as aforesaid, or if any person make or branch, or cause to be made or branched, any drain of a different construction, size, material, or other conditions, or in another manner or form of communication than shall be directed or appointed by such board or vestry, every person so offending shall for every such offence forfeit a sum not exceeding 50*l.*; and the board or vestry may cut off the connexion between such drain and their sewer, or if they shall see fit execute the necessary works for making the said drain conformable to their regulations or directions at the expense of the person making such drain or causing the same to be made, such expenses to be recovered either by action at law or in a summary manner before a justice of the peace, at the option of the board or vestry.

Reports as to underground rooms occupied as dwellings (*x*).

LXII. Every district surveyor required to report by the one hundred and third section of the firstly-recited Act shall, without fee or reward, report to the metropo-

(*v*) As to the discretion of the board or vestry with respect to the materials to be used, see *Austin* v. *St. Mary, Lambeth*, 27 L. J. (N. S.) Ch. 677, cited in note (*h*) to s. 76, 18 & 19 Vict. c. 120, *ante*, p. 51.

(*w*) See sect. 80 of 18 & 19 Vict. c. 120, *ante*, and sect. 50 of this Act.

(*x*) The bill as originally introduced proposed to transfer the duties imposed on the district surveyors, under the Building

litan board, and to every vestry and district board in the district in which such surveyor may act, in the months of June and December in each year, and at all other times when he shall be required so to do by any such board or vestry, all underground rooms or cellars occupied as dwellings within the meaning of the first-recited Act that are not built or constructed in conformity with the rules contained in the said section, and shall in such report set forth the exact locality in which such underground rooms or cellars are situate; and in any proceedings taken to recover the penalty under the said one hundred and third section of the said Act, such evidence as may give rise to a probable presumption (*y*) that some person passes the night in such room or cellar shall be evidence, until the contrary be made to appear, that such has been the case.

Extension of time under sect. 76 of 18 & 19 Vict. c. 120, for making orders by vestries and district boards (*z*).

LXIII. Whereas by the seventy-sixth section of the firstly-recited Act, it is provided that the vestry or district board shall make their order in relation to the matters therein referred to, and cause the same to be notified to the person from whom the notice mentioned in the said section was received within seven days after the receipt of such notice, and it is expedient that the time for making such order should be extended: Be it there-

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Act, from those officers to the inspectors of nuisances and local surveyors, to whose functions it appeared more especially to appertain, but the alteration was not sanctioned by the legislature. It is presumable that the section, as now framed, is in substitution of the requirements of the district surveyor under the 103rd section. This provision renders the district surveyors subject to the orders of vestries and district boards as regards the reports in question.

(*y*) It would seem that the evidence raising *probable presumption* must be such as would constitute *reasonable grounds* within sect. 104 of 18 & 19 Vict. c. 120, *ante*.

(*z*) As the ordinary meetings of vestries and district boards only take place weekly, and in some instances at less frequent intervals, much inconvenience in practice was experienced from the shortness of time allowed by the 76th section of 18 & 19 Vict. c. 120, for notifying the orders of these bodies in

fore enacted, that where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and proper so to do, within three days after the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice, to require that the building or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after the receipt of such notice by the vestry or district board; and in case any person shall proceed with any building or works contrary to this enactment he shall forfeit and pay to the vestry or district board a sum not exceeding 5*l.*, and also a further sum of 40*s.* for every day during which such offence shall continue, to be recovered by action at law or in a summary manner at the option of the vestry or board.

Where parties neglect to carry out works pursuant to order of vestry, the vestry may recover penalty or do the works (*a*).

LXIV. Whereas by the seventy-third, seventy-fourth, seventy-sixth, eighty-first, eighty-fifth, and eighty-sixth sections of the firstly-recited Act, certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board

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reference to the levels at which the foundations of houses might be built, the form, material, &c. of drains, water supply, and other matters. In some parishes the surveyor or other officer, acting under a previous general order of the vestry or board, served notice on the party containing certain requirements in reference to the works, but there is little doubt that this was not a compliance with the directions of the Act.

(*a*) Under the provisions referred to relating to the branch-

are authorized to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: Be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding 5*l.*, and also a further sum not exceeding 40*s.* for every day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner, at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works.

Penalties in 18 & 19 Vict. c. 120, extended to persons causing offences (*b*).

LXV. The penalties declared by the firstly-recited Act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

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ing of drains into sewers, the laying on water, the levels of buildings, the construction of house drains, waterclosets, and ashpits, the filling up of ponds, open ditches, &c., vestries and district boards, in case of default by private parties in complying with these orders, could only execute the works themselves, and proceed against the parties liable to recover the expenses. This enactment gives them the option of doing the works, or proceeding for penalties, and under the latter alternative it gives them the protection of a magistrate's order.

(*b*) The remedy is at present confined to the workman or other party performing the act complained of. This provision

Temporary provision for drainage of property where no proper sewer within 200 feet (*f*).

LXVI. Whereas certain property within the limits of the metropolis is so situate as to render it impracticable, or practicable only at undue expense, to connect such property with covered sewers, and it is expedient that some temporary provision should be made for draining such property and abating the nuisances existing thereon or caused thereby: Be it therefore enacted, that in any case in which any house or other building, whether erected before or after the passing of this Act, is without sufficient drainage, and there is no proper sewer within two hundred feet of any part of such house or building, it shall be lawful for the vestry or district board of the parish or district in which such house or building is situate by notice in writing to require the owner of such house or building to construct and lay from such house or building a covered drain to lead therefrom into a covered water-tight cesspool or tank or other suitable receptacle, not being under a house or within such distance from a house as the vestry or board shall direct, and to construct such cesspool, tank, or receptacle; and the several provisions (*g*) in the firstly-recited Act with respect to the laying of house drains at the expense of the owners of property, and the recovery of such expenses of and the penalties for any omission in respect to the performance of any such works pursuant to the orders of vestries or district boards in accordance with the directions of the said Act, shall be extended to and apply to the making of such cesspools, tanks, receptacles, and drains, and the

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will subject the master builder, in some instances the owner, to penalties.

(*f*) The power given by the 75th section of the 18 & 19 Vict. c. 120, calling on parties where there is no existing or intended sewer within one hundred feet of the house or site, to drain into a cesspool, is limited to houses erected or rebuilt after the passing of that Act. This provides temporary means of drainage in cases in which certain property, whether built before or after the Act, must from its situation either drain into cesspools, or remain wholly without drainage.

(*g*) See sects. 73, 76, and 77 of 18 & 19 Vict. c. 120, *ante*.

orders of vestries and district boards in relation thereto and the expenses thereof.

Vestries, &c. may compel supply of water for houses (*h*).

LXVII. If it shall appear to any vestry or district board that any house within their respective parishes or districts is without a proper supply of water, and that such supply can be furnished to such house at a rate not exceeding 3*d.* per week, conformably with the scale of rates authorized to be charged by any water company within the metropolis as defined by the firstly-recited Act, the said vestry or district board may give notice in writing to the owner or occupier of such house, requiring him, within a time specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose; and if such notice be not complied with, the said vestry or district board shall do such works and recover the expenses thereof from the owner of the premises as hereinafter provided; and any water company shall, upon the requisition of such vestry or board, supply with water such house, and the rates for the supply of such house or houses as aforesaid shall be due and payable by the said owner, and shall be recovered by the company as if such owner had contracted with the company for the supply of such water.

In any case where it shall appear to any vestry or district board that the existing supply of water to any house within their respective parishes or districts would be sufficient for such house if the same were inhabited by a lesser number of persons, but is insufficient by reason that the same is inhabited by numerous persons (being more than one single family), it shall be lawful for such vestry or district board to give notice in writing to the occupier of such house, requiring him, within a time specified therein, to obtain such further supply (not exceeding a supply at the rate of thirty gallons per day

(*h*) The first part of this section is in substance borrowed from the Metropolis Water Supply Act, 15 & 16 Vict. c. 84. The latter part, incorporating the proceedings under the Nuisances Removal Act, is new.

for each person) as to them shall appear necessary, and to do all such works as may be necessary for that purpose; and if such notice be not complied with within the time therein specified, it shall be lawful to take proceedings for overcrowding, in the manner provided by the "Nuisances Removal Act for England, 1855;" (*i*) and upon proof of the fact that the water supply is not sufficient by reason of the number of persons inhabiting the said house (being more than one family), it shall be lawful for the justices to make the like order and to inflict the like penalty as in any other case of overcrowding.

Penalty on persons placing buildings or encroachments on sewers (*k*).

LXVIII. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any

(*i*) By the 29th section of the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, on a certificate by the medical officer of health, or, if there be none, of two qualified medical practitioners, the local authority shall cause proceedings to be taken before the justice to *abate* such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40*s*.

(*k*) The Metropolis Local Management Act, 18 & 19 Vict. c. 120, has no clause similar to that contained in the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 145, preserving, with certain exceptions, the provisions and powers of the 23 Hen. 8, c. 5, and the subsequent general Acts relating to commissions of sewers; and the powers of the boards and vestries constituted by the first-named Act for preventing encroachments, have been found wholly inadequate for their objects. The 68th and 135th sections of that Act transfer to those bodies the rights vested in their predecessors *concerning or incident* to sewers; but the only remedies against wrongdoers are those contained in the substantive provisions of the Act, viz., the 77th, 83rd, 204th, 205th, and 206th sections, which are limited to the specific injuries described therein, and fail to reach many of those acts of wrongful interference with the subject-matters of jurisdiction by the boards and vestries which it is essential to repress or punish. As to the remedies under the general law of sewers in cases of annoyance and encroachment, see Callis on Sewers, 171, 178, Serj. Woolrych, Law of Sewers, p. 100, *et seq.*, 2nd ed., and the decisions, cited in the notes, which tend to elucidate the nature of the wrong-

sewer (*l*) under the jurisdiction of the metropolitan board of works, or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the metropolitan board, or of any vestry or district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefor, forfeit and pay to such respective board or vestry a sum not exceeding 20*l.* for every such offence (*m*); and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged; and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, and of reopening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid, the offender shall be liable to a further penalty, not exceeding 5*l.*, for each day after notice thereof from the metropolitan board of works, or from the vestry or district board, to be recovered by action at law or before any justice of the peace by a summary proceeding, at the option of the board or vestry: Provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair, or renewal of any buildings or works under which a sewer or drain has been

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ful acts described in this and the following section. See note (*a*) to sect. 68, 18 & 19 Vict. c. 120, as to the rights of boards and vestries in relation to sewers.

(*l*) In the case of the *Poplar District Board of Works* v. *Knight and another*, referred to in note (*f*) to sect. 204 of 18 & 19 Vict. c. 120, *ante*, the river bank or wall of the Thames was held to be a *sewer* within that section; and see definition of the word "sewer" in sect. 250 of that Act, *ante*.

(*m*) As to the recovery of the penalty, see sect. 102, *post*.

constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain.

Penalty on persons interfering with sewers (a).

LXIX. Any person who shall take up, remove, demolish, or otherwise interfere with any sewer or part of a sewer vested in the metropolitan board of works, or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gully, side entrance, tide valve, flap, work, or thing vested in the metropolitan board or any vestry or district board, or do any act by which the drainage of the metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said metropolitan board of works, or to the vestry or district board aggrieved by any such act, for every such offence a sum not exceeding 20*l.*, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law or before a justice of the peace by a summary proceeding, at the option of the board or vestry.

Vestries in schedule (A.) and district boards empowered to provide and maintain drinking fountains.

LXX. The vestry of any parish mentioned in schedule (A.) to the said firstly-recited Act and any district board may provide and maintain drinking fountains in such convenient and suitable situations as they may deem proper, and may undertake the maintenance of any drinking fountain already erected within such parish or district, and supply the same with water and defray the expenses thereof; and any expenses incurred by any vestry or district board in providing or maintaining any such fountains or supplying the same with water shall be paid out of the general rate authorized to be raised and levied under the firstly-recited Act; and any person

(a) See notes to last section.

guilty of wilfully fouling the water in any drinking fountain so erected or maintained, or of wilfully damaging any of the said fountains, or any part thereof (*b*), shall forfeit and pay to such vestry or district board for every such offence a sum not exceeding 5*l*., to be recovered by a summary proceeding, and shall also pay to such vestry or district board the expenses of repairing or reinstating any such fountain, or any part thereof, so injured as aforesaid.

Income of estates, property, &c., subject to trusts for repair of highways, to be paid over to vestry or district board (*c*).

LXXI. All property, rights, matters, and things whatsoever which before the passing of the firstly-recited Act were vested in any surveyor or surveyors of highways in connexion with their duties and powers as such surveyor or surveyors, transferred by that Act to any vestry or district board, shall be deemed to have become transferred to and to have vested in such vestry or district board by virtue of the said Act; and so much of the yearly and other income of all estates, property, and effects of whatsoever description so vested and transferred as aforesaid as is or may be subject to any use or trust for or in respect of and applicable to the repair of any highways within the metropolis shall be applicable to the repair, maintenance, and improvement of the highways within the metropolis under the provisions of the said Act, and shall from time to time be accounted for and paid over to the respective vestries and district boards, and be applied by them for the purposes of the highways within their parishes and districts, in the same manner as the same could lawfully have been applied before the passing of the said Act.

(*b*) See as to supply of water for public fountains by local board of health, *Hildreth* v. *Adamson*, 8 C. B. (N. S.) 587.

(*c*) The language in the 96th section of 18 & 19 Vict. c. 120, transferring to vestries and district boards the powers, authorities, and duties of surveyors of highways, and certain property vested in those officers, is not large enough to include the income and proceeds of certain estates, which are, in some localities, subject to trusts for the repair of highways.

Vestries and district boards may, with consent of metropolitan board, effect improvements within their parish or district (*d*).

LXXII. The vestry of every parish mentioned in schedule (A.) to the firstly-recited Act, and the district board of every district, shall, with the previous consent in writing of the metropolitan board of works, have power within their respective parish or district to make, extend, widen, alter, or improve any street, road, or way, or any bridge over a canal traversing any part of such parish or district, for the purpose of facilitating passage and traffic, or for any other public purpose; or to contribute and join with the metropolitan board, or with any other body or persons, in any such improvements; and to take by agreement or gift any land, right in land, or property for the purposes aforesaid, or any of them, on such terms and conditions as they may think fit; and for the purposes aforesaid it shall be lawful for any vestry or district board, should they see fit, to take down the present bridges over canals within their parish or district, and to erect others in their place and stead, or to erect new bridges over such canals in such situations as they may deem beneficial, and from time to time to repair and maintain such existing or new bridges, and

(*d*) The power of making, widening, or improving streets, roads, or ways, is by the 144th section of the 18 & 19 Vict. c. 120, given to the metropolitan board of works only, who are authorized to contribute and join with any persons in such improvements. This provision enables vestries and district boards to effect improvements of the nature described, and to take land by agreement or gift, with a proviso that the enactment is not to limit the powers given by the General Metropolitan Paving Act, 57 Geo. 3, c. 29, or by any local Act. The 57 Geo. 3, c. 29, s. 80, *et seq.*, *post*, Appendix, enables the paving authorities to make improvements of their own authority and without consent; but the provision at the commencement of the present section, rendering the previous consent of the metropolitan board necessary, seems to impose the condition of such consent before the improvements mentioned in the 80th section of 57 Geo. 3, c. 29, so far as they are identical with those described in the present section, can be carried into effect; and if that be so, notwithstanding the proviso at the end of the section, those powers would to this extent be limited. By the 19 & 20 Vict. c. 112, s. 11, vestries and district boards are empowered to take by agreement or gift any land for the purpose of open spaces and pleasure grounds.

to indemnify the canal company or other body or persons interested in such bridges against the future repairs and maintenance of any such bridges; and the expenses incurred by any vestry or district board in any such improvements shall be paid out of the general rate (*e*) authorized to be raised in their parish or district under the firstly-recited Act: Provided that no such extension, widening, alteration, improvement, taking down, or re-erection of any existing bridge over any such canal, or the erection of any new bridge over the same, shall be made without the previous consent in writing under their common seal of the company owning such canal, and the provisions of the one hundred and seventh section (*f*) of the firstly-recited Act shall remain in force and be applicable to this enactment: Provided also, that it shall be lawful for any such vestry or district board, under the provision contained in the one hundred and eighty-third section of the firstly-recited Act, to borrow and take up at interest on the credit of all or any of the monies or rates authorized to be raised by them under that Act any sums necessary for defraying the expenses of any such improvements: Provided, that nothing in this Act shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate: Provided that this enactment shall not limit (*g*)

(*e*) The expenses of improving streets by vestries and district boards are to be paid out of the general rate, but the expenses of similar improvements, when carried out by the metropolitan board, are to be defrayed out of the sewer rates.

(*f*) The 107th section contains the prohibition against the removal of any bar, gate, &c., which is repeated in terms in the proviso at the end of the section, and its introduction here seems to be superfluous.

(*g*) As to what shall be construed to be a limiting of these powers, see note (*d*), *supra*, p. 298.

the powers now in force given by the Act next hereinafter referred to, or by any local Act.

Act as to paving and improving parts of metropolis to extend to metropolis as defined by this Act (*h*).

LXXIII. The powers of improving and regulating streets and for the suppression of nuisances contained in the Act of the fifty-seventh year of the reign of His Majesty King George the Third, chapter twenty-nine, local and personal, intituled "An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein," shall, so far as the same is in force, and is not inconsistent with the provisions of the recited Acts and this Act, extend and apply to the metropolis as defined in the firstly-recited Act and in this Act, including any unpaved streets, and notwithstanding any exceptions therein contained.

Buildings projecting beyond

LXXIV. In case any building, situated within any of the parishes, districts, or places comprised in the sche-

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(*h*) This Act, 57 Geo. 3, c. 29, the General Metropolitan Paving Act (commonly known as Michael Angelo Taylor's Act), extended to all streets and public places which were at the time of its passing paved or might be thereafter paved within the cities of London and Westminster and borough of Southwark, and any other parts of the metropolis which were included within the weekly bills of mortality, and to all streets and public places which were then paved, or might be thereafter paved, within the parishes of St. Pancras and St. Marylebone, except only certain parts particularly excepted. The exceptions were contained in the 139th section, exempting from the provisions of the Act the estate of the Marquis Camden in St. Pancras, the 140th exempting the estate of Lord Sommers in the same parish, the 143rd declaring that the Act should not extend to the parishes of St. Mary, Islington, and St. John, Hackney. The 144th section saved certain provisions of the Act 56 Geo. 3, c. 128, with respect to the powers of the commissioners for executing the Act for opening a communication from Marylebone Park to Charing Cross, &c.; and by the 146-7th section the Act was not to extend to the estates of the Collegiate Church of Westminster contiguous thereto. By the 147th section turnpike roads were exempted from its provisions. See the clauses incorporated by the present section, *post*, Appendix.

dules of the firstly-recited Act, which shall in any part thereof project beyond the general line of the street in which the same may be situate, or beyond the front of the building, wall, or railing on either side thereof, shall at any time be taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, or shall be destroyed by fire or other casualty, or demolished, pulled down, or removed from any other cause to the extent aforesaid, it shall be lawful for the metropolitan board of works to require the same to be set back to such a line and in such a manner for the improvement of any street as the said board shall direct; provided that the said board shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby: Provided also, that this section shall not apply to any building in the places mentioned in schedule (C.) to the Metropolis Local Management Act which does not abut upon any public street or place.

General line when taken down to be set back (*i*).

LXXV. The one hundred and forty-third section of the first-recited Act, and the one hundred and fortieth section of the Act passed in the seventh year of His Majesty King George the Fourth, chapter one hundred and forty-two, intituled "An Act for consolidating the Trusts of the several Turnpike Roads in the Neighbourhood of the Metropolis north of the River Thames" (*k*)

Mode of proceeding with regard to buildings beyond line of street.

(*i*) This section is in substance borrowed from a provision in the City Sewers Act, 11 & 12 Vict. c. 163, s. 153, by which a similar power is given to the commissioners of sewers for the city, which is not interfered with, as this enactment only applies to the places mentioned in the schedules to 18 & 19 Vict. c. 120, and therefore does not extend to the city of London.

(*k*) The 140th section of 7 Geo. 4, c. 142, provided that, with certain specified exceptions, no building should be erected on any new foundation within fifty feet of the sides of the road leading from the Edgware Road, near Paddington, to the Great Northern Road in Islington, and from the north end of Great Portland Street to such road,—that no part of the said roads should be paved except under the provisions of that Act; and that if any building should be so erected or pavement laid down, &c., the same should be deemed common nuisances.

are hereby repealed; and in lieu thereof be it enacted, that no building (*b*), structure, or erection shall, with out the consent in writing of the metropolitan board of works, be erected beyond the general (*c*) line of buildings in any street, place, or row of houses (*d*) in which the same is situate in case the distance of such line of buildings from the highway does not exceed fifty feet, or within fifty feet (*e*) of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway, such general line of buildings to be decided by the superintending architect to the metropolitan board of works for the time being, and in case any building, structure, or erection be erected, or be begun to be erected or raised, without such consent, or contrary to the terms and conditions on which the same may have been granted, it shall be lawful for the vestry of the parish or the board of works for the district in which such building or erection is situate to cause to be made complaint (*f*) thereof before a justice of the peace, who

(*b*) Neither this Act nor the 18 & 19 Vict. c. 120, gives any interpretation of the word *building*. The 1st section of first schedule to the Metropolitan Building Act, *post*, Appendix, regulating the structure of buildings, requires that every building shall be enclosed with walls. See as to the meaning of the word under that Act, *Stevens* v. *Gourley*, 29 L. J. (N. S.) C. P. 1, cited in note to sect. 143, 18 & 19 Vict. c. 120, *ante*, p. 104.

(*c*) The word "general" is substituted for "regular," which occurred in the repealed enactment. See *Tear* v. *Freebody*, 22 J. P. 707; and *Robins* v. *Bury*, 25 J. P. 83.

(*d*) The words "place or row of houses" were not in the repealed section, and their addition will remove doubts as to the application of the provision to separate rows of houses, terraces, and the like in long lines of road. See as to the construction put upon analogous provisions in schedule (E.) of the former Metropolitan Building Act, 7 & 8 Vict. c. 84, by the official referees, Lawes' Proceedings under the Metropolitan Building Act, 1846.

(*e*) The distance in the repealed enactment was thirty feet.

(*f*) This enactment, providing for an inquiry before a justice of the peace, is substituted for the provision in the repealed

shall thereupon issue a summons requiring the owner or occupier of the premises, or the builder or person engaged in any work contrary to this enactment, to appear at a time and place to be stated in the summons to answer such complaint; and if at the time and place appointed in such summons the said complaint shall be proved to the satisfaction of the justice before whom the same shall be heard, such justice shall make an order in writing on such owner or occupier, builder, or person, directing the demolition of any such building or erection, or so much thereof as may be beyond the said general line so fixed as aforesaid, within such time as such justice shall consider reasonable, and shall also make an order for the payment of the costs incurred up to the time of hearing; and in default of the building or erection complained of being demolished within the time limited by the said order, the said vestry or board shall forthwith enter the premises to which the order relates and demolish the building or erection complained of, and do whatever may be necessary to execute the said order, and may also remove the materials to a convenient place, and subsequently sell the same, as they think fit (*g*); and all expenses incurred by the said vestry or board in carrying out the said order and in disposal of the said materials may be recovered by the said vestry or board from the owner or occupier of the said premises, or the builder or person engaged in the work, either by action at law or in a summary manner before a justice of the peace, at the option of the said vestry or board, in manner provided by the two hundred and twenty-seventh section of the firstly-recited Act as to the recovery of penalties.

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provision, by which the bodies in question were required, in cases in which they intervened, to take upon themselves the responsibility of demolishing the buildings in whole or in part in the first instance,—a responsibility which they were frequently reluctant to assume.

(*g*) This is a new power. In *Tear* v. *Freebody*, *supra*, note (*c*), the removal of the materials was held to be a conversion.

Conditions as to buildings beyond line of street.

LXXVI. The metropolitan board may, in giving consent for any erection (*h*) beyond the regular line of the buildings in any street, annex any condition to the consent given by the board, and in case such erection shall not be made in accordance with the consent of the board, or be in any manner altered or raised without their consent, the board may enter and demolish or alter the buildings or structure, or any part thereof, and recover all expenses, or may impose any penalty not exceeding 40*s.*, to be summarily recovered for every day during which any building or structure being a contravention of such condition shall exist after notice from the said board or any officer of the board to remedy the complaint.

Expenses of paving new streets.

LXXVII. Where any vestry or district board shall, under the powers given by the one hundred and fifth section of the firstly-recited Act, have paved or be about to pave (*i*) any new street (*k*), the owners of the land (*l*) bounding or abutting on such street shall be liable

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(*h*) This section is evidently hastily drawn, and contains some verbal inaccuracies. The word "erection" only is here used, omitting the words "building" and "structure" occurring in the preceding section, and in the subsequent part of this section the words "buildings or structure" are used, and the word "erection" is dropped. If the preceding section proceeds upon the supposition that there may be structures or erections which are not buildings, the present section seems to lose sight of the distinction, and it treats all three expressions as synonymous. This section gives a concurrent power to the metropolitan board, and to the vestries and district boards to intervene by the special mode of proceeding pointed out in case of an infraction of its provisions, and great caution must be taken to prevent any collision or discordance in the proceedings, which may be adopted.

(*i*) See interpretation of word "pave," sect. 112, *post*.

(*k*) See *R.* v. *Dayman*, 26 L. J. (N. S.) M. C. 128, cited in note to sect. 105 of 18 & 19 Vict. c. 120, *ante*, p. 73, wherein it was decided to be a question for the magistrate to determine whether or not a street was a "new street." See now the definition of the expression "new street," sect. 112, *post*.

(*l*) The provision referred to imposed the cost of this work on the owners of houses exclusively, and the section as now

to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all other incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner of the premises either by action at law (*m*) or in a summary manner before a justice of the peace, at the option of the vestry or board.

Vestry may flag footways and levy the costs.

LXXVIII. In case any footway laid out at the passing of the firstly-recited Act shall have been repaired by the vestry or any other body, but shall not have been flagged, and the vestry (*n*) or district board shall have deemed it necessary or expedient, or shall deem it necessary or expedient that the same should be flagged, and such vestry or board shall have flagged or shall flag the same, either throughout the whole breadth thereof or any part of such breadth, it shall be lawful for such vestry or board to levy the cost and expenses by a rate

framed contains additional provisions for the recovery of incidental expenses. It also gives a wider discretion to the vestry as to the time and mode of payment.

(*m*) These expenses could not before be recovered by action. *Vestry of St. Pancras* v. *Batterbury*, 26 L. J. (N. S.) C. P. 243.

(*n*) This applies only to vestries in schedule (A.) to 18 & 19 Vict. c. 120.

or rates (*a*) upon the occupiers (*b*) of the houses (*c*) in the road, street, or part abutting on or next to the footway which shall have been so flagged, either in one sum or by equal instalments spread over a period not exceeding twenty years, as the said vestry or board may see fit; and the said vestry or board shall thenceforth keep the said flagging in good and sufficient repair.

Sums to be paid by the Duke of Bedford to parties making up roads and footways on Bedford estate, in the parish of St. Pancras, to be added to debt on that part of the parish.

LXXIX. And whereas at the time of the coming into operation of the firstly-recited Act (*d*) certain houses were in course of erection or about to be erected by private parties on certain lands, parts of the estate belonging to his Grace the Duke of Bedford, in the parish of Saint Pancras, and the roads and footways in front of the said houses and land were partly paved by and at the expense of the said parties before the coming into operation of the firstly-recited Act: And whereas the commissioners acting under the local and personal Act of the session holden in the thirty-ninth and fortieth years of King George the Third, chapter forty-nine, relating to the paving of the said estate, and whose powers were determined by the firstly-recited Act, ought, under the power vested in them by the said Act of the

(*a*) What is here called a rate would be a rateable proportion of the expenses of flagging distributed among the occupiers according to some criterion to be fixed by the vestry, probably the frontage of the premises abutting on the footpath. The word apparently has no reference to the rateable value of the property, as in the case of other rates under the 18 & 19 Vict. c. 120.

(*b*) The cost is here thrown upon the "occupiers," and not upon the "owners," like the expenses falling under the preceding section. There seems no reason for the distinction, as both classes of works are of a permanent character, and more especially benefit the owner. This provision would operate with great hardship on a tenant from year to year, or for a short term.

(*c*) This does not, as under the 77th section, include the owners of *land* abutting on the footpath.

(*d*) Viz., on the 1st January, 1856. This clause was introduced in consequence of the failure of an indictment against the vestry of St. Pancras for the non-repair of one of these roads, tried in the Court of Queen's Bench at Westminster, 26th November, 1859.

thirty-ninth and fortieth years of King George the Third, to have executed the said works of paving, or to have defrayed the cost thereof, and payment for the same would, if the powers of the said commissioners had not been determined, have been made out of the money arising from rates or assessments to be made under the said Act of King George the Third, or money borrowed on the security thereof; but the arrangements respecting the said works were not such as to be binding on the vestry of the said parish under the transfer made to such vestry by the said firstly-recited Act (*e*) of the debts and liabilities legally charged upon or payable out of rates or assessments authorized to be made under the said Act of King George the Third: And whereas certain of the said parties are willing to complete the said roads and footways in consideration of the payment to them of certain sums of money, such sums to be received in satisfaction as well of past as of future expenses incurred by them in the making or paving of the said roads or footways: And whereas his Grace the Duke of Bedford is willing to advance such sums of money, and it is expedient to authorize the addition of such sums to the said debt on the completion as aforesaid of the said roads and footways and payment of the said sums to the said parties respectively: Be it therefore enacted, that upon the completion of the said roads and footways to the satisfaction of the said vestry, and the production to them of the receipts in writing of the said parties respectively for the said sums from his Grace the Duke of Bedford or his agent, such sums shall respectively become debts to the said duke, and be added to and form part of the debt which at the time of the coming into operation of the firstly-recited Act was legally charged upon the said rates or assessments, and shall carry interest at the rate of 4*l.* per centum per annum, payable half-yearly on the 1st day of January and the 1st day of July in every year from the time of the receipt of such sums by the said parties or the completion

(*e*) That is, by the 180th section of the 18 & 19 Vict. c. 120.

of the said roads and footways as aforesaid, which shall last happen; and section one hundred and eighty of the firstly-recited Act shall be applicable accordingly in respect of such sums and the interest thereof in like manner as in respect of such debt as last aforesaid.

Proviso to sect. 106 of 18 & 19 Vict. c. 120, repealed.

LXXX. The proviso of the one hundred and sixth section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no street not being a highway (*f*) shall be repaired as in the said section mentioned, unless notice be given to the owners (*g*) and rated occupiers of the houses in such street respectively; and service of any such notice may be effected by leaving the same at the several houses in such street, or where any of the said houses shall be unoccupied, by affixing the same upon the outer door or some conspicuous part of such houses; and provided further, that no such street shall be repaired as in the said section mentioned if within one month after notice has been given as aforesaid written notice of objection to such repair, signed by at least two-thirds of the owners or rated occupiers of houses in the said street, shall be given to the vestry or district board.

Notice of intention to repair street not being a highway.

Where owners of courts, &c., omit to drain and pave, vestry or district board may perform the works, charging expenses to owner.

LXXXI. In any case of default by the owner of any court, passage, or public place, not being a thoroughfare, to comply with the requisition of any vestry or district board to perform works of paving or draining of the nature described in the one hundredth section of the firstly-recited Act, it shall be lawful for the vestry or board, should they see fit, in lieu of enforcing the pe-

(*f*) The term *highway* may include streets other than those repairable by the parish. See *R.* v. *Dayman*, 26 L. J. (N. S.) M. C. 128.

(*g*) Instead of the provision in the repealed section requiring notice to all "persons interested," notice is to be given to owners and rated occupiers, and a special mode of service is prescribed. The objection must now proceed from two-thirds of the owners or rated occupiers instead of from a single person interested, as under the repealed section. The word "owner" is for this purpose by sect. 250 of 18 & 19 Vict. c. 120, defined to mean the person receiving the rackrent of the premises.

nalty (*h*) therein mentioned, to execute and perform such works, and recover the expenses thereof from the owner either by action at law or in a summary manner before a justice, at the option of the vestry or board.

Reinstatement of pavement broken up by works of companies, &c. (*i*)

LXXXII. In every case in which any company or person shall be liable under the firstly-recited Act to reinstate the pavement, surface, or soil of any street under the control of any vestry or district board which may have been broken up or opened, or to repay to such vestry or board the expenses of reinstating the pavement, surface, or soil of any street, every such company or person shall be liable to reinstate the pavement, surface, or soil, or to pay the expenses of reinstating the pavement, surface, or soil of such parts of the street as shall have been so broken up or opened, as well as of the part or parts contiguous thereto which may be affected by the works of such company or person, to the reasonable satisfaction of the surveyor for the time being of the vestry or district having control over the pavements in such parish or district.

Metropolitan board may make bye-laws for guidance of vestries, &c., in construction of sewers (*k*).

LXXXIII. The metropolitan board of works may, in order to secure the efficient maintenance of the main and general sewerage of the metropolis, from time to time make, alter, and repeal byelaws for the guidance, direction, and control of the vestries of parishes in schedule (A.) to the firstly-recited Act, district boards, and all other persons, in relation to the levels, dimensions,

(*h*) The penalty given by the section referred to, viz., 5*l.*, was insufficient to prevent a breach of the enactment.

(*i*) The provisions in the 18 & 19 Vict. c. 120, as to the breaking up and reinstatement of pavements disturbed by companies, are the 109th and following to the 115th inclusive. The direction in the 110th section is, "to make good the pavement, or surface, or soil, broken up or injured." The obligation of companies is now extended so as to comprise not only the parts actually broken up or opened, but such *parts contiguous thereto* as may be affected by the works of the company. This provision is founded upon the 23rd section of the 57 Geo. 3, c. 29 (Metropolitan General Paving Act).

(*k*) The power of making byelaws given by the 202nd sect. of the 18 & 19 Vict. c. 120, does not extend to regulations

construction, maintenance, ventilation, and cleansing of sewers in their respective parishes, districts, or parts, and for the other objects enumerated in the one hundred and thirty-eighth section of the firstly-recited Act, subject in all respects (*c*) to the several provisions relating to byelaws contained in the two hundred and second section of the said Act; but this provision shall only extend to the city of London (*d*) and the liberties thereof, so far as regards the main drainage of the metropolis.

Vestries, &c., may stop up streets during execution of works.

LXXXIV. It shall be lawful for any vestry or district board, with the previous sanction of the metropolitan board of works, to close or stop up any street (*e*) within their parish or district, during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as shall be necessary in that behalf, and allowed by the metropolitan board.

Height of buildings in

LXXXV. No building, except a church or chapel, shall be erected on the side of any new street of a less

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respecting sewers, but is limited to those relating to pipes, drains, and other means of communication with sewers. This section authorizes the making of byelaws for the purposes mentioned in the 13th section of that Act, and is a more effectual mode of securing compliance with the directions of the board than is contained in the section referred to, which gives no summary mode of enforcing the general and special orders mentioned in it.

(*c*) This includes the power of imposing penalties, subject to the approval of the byelaws by the secretary of state.

(*d*) This saving has no meaning and is simply nugatory. The enactment is intended to give the metropolitan board the control in the matters specified over the mode in which local bodies execute works of *local* sewerage, and these words which limit the application of the provision to main drainage works which are not executed by the commissioners of sewers for the city at all, but by the metropolitan board, are wholly inoperative.

(*e*) The power to stop up the way through or along streets is given by the 52nd section of 57 Geo. 3, c. 29 (General Paving Act), for the purposes there specified. The necessity of the consent of the metropolitan board seems to be a restriction on that power.

width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street, without the consent in writing of the metropolitan board of works; nor shall the height of any building so erected be at any time subsequently increased so as to exceed such distance without such consent; and in determining the height of such building the measurement shall be taken from the level of the centre of the street immediately opposite the building up to the parapet or eaves of such building; and every person committing any offence under this enactment shall be liable to a penalty of 5*l.*, and in case of a continuing offence to a further penalty of 40*s.* for every day during which such offence shall continue after notice from the said board, to be recovered by summary proceeding.

Certain streets (*f*).

LXXXVI. Where in any street the roadway and footpaths or either of them are or is situate in more than one parish or district, or where the whole of the roadway and footpaths of any street are situate in one parish or district, and the whole or any part of the houses and buildings abutting on such roadway or footpaths are situate in another parish or district, in either of the said cases it shall be lawful for the metropolitan board of works, should they deem it convenient and proper so to do, to order that any such roadway and footpaths

Metropolitan board may place roadway, footpaths, &c. in different parishes or districts under management of one vestry or district board (*g*)

(*f*) The byelaws promulgated under Local Government Act, 21 & 22 Vict. c. 98, s. 34, contain provisions of a similar character.

(*g*) By the 140th sect. of 18 & 19 Vict. c. 120, the metropolitan board is authorized to place any street in different parishes under one management, and the 160th section directs that the sums required for defraying the expenses incurred in the part so placed under their management shall be paid by the vestry or district board having control over that part. This enactment empowers the board, in the cases comprised within the enactment, to determine the proportions in which the cost of the works and operations specified shall be borne by such parish.

shall, for the purposes of sewerage, drainage, paving, and lighting, or any of them, be under the exclusive management of the vestry or district board of one of the said parishes or districts, and to order and direct in what proportions the costs of constructing and maintaining any new sewer or drain in such street, or of the reconstruction, reparation, or maintenance of any existing sewer or drain therein, or of the paving or making up or lighting of the roadway or footpaths thereof, and the repair and maintenance of such roadway or footpaths, shall be borne and defrayed by the vestry or board of each parish or district, and the decision of the said metropolitan board thereon shall be final and conclusive; and in case of default by any vestry or board liable under any such order to any such payment, the vestry or district board entitled thereto may sue for and recover the amount thereof from the vestry or board so making default by action at law.

Affixing names of streets by vestries and district boards (*h*).

LXXXVII. The one hundred and forty-first section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that vestries and district boards shall and may, within the limits of their respective jurisdictions, from time to time cause to be painted or affixed on a conspicuous part of some house or building

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(*h*) By this provision, as re-enacted, the several vestries and district boards as to parts out of the city limits, and the commissioners of sewers within those limits, are to affix the names of streets instead of the metropolitan board as directed by the repealed section. Further, the power of the metropolitan board to alter the names of streets is not limited to cases in which more than one street is called by the same name, and the exercise of that power is no longer subject to the approval of the commissioners of Her Majesty's works. And with respect to the numbering of houses, the duty of the metropolitan board is henceforward limited to the making the order and the transmission of a copy of it to the vestry or district board; and all subsequent acts and proceedings for giving effect to the order are transferred to the last-named bodies.

at or near each end, corner, entrance, or other convenient part of any street in their parish or district, the name of such street, and renew such name whenever it may be obliterated or defaced; and the metropolitan board of works may alter the name of any street to any other name which to such board may seem fit; and before any name is given to any street, notice of the intended name shall be given to the said metropolitan board, and the said board may, by notice in writing given to the person by whom notice of such intended name has been given to them, at any time within one calendar month after receipt of such notice, object to such intended name; and it shall not be lawful to set up any name to any new street in the metropolis until the expiration of one calendar month after notice thereof has been given as aforesaid to the said metropolitan board, or to set up any name objected to as aforesaid; and whenever the said metropolitan board shall, under the power hereinbefore given, have ordered or directed an alteration in the name or names of any street, or of any place or row of houses, or in any line of road (*i*), they shall transmit a copy of their order directing such alteration to the vestry or district board in whose parish or district such street, place, row of houses, or line of road shall be situate; and such vestry or district board shall thereupon cause to be painted or affixed on a conspicuous part of some house or building, to the satisfaction of the said metropolitan board, at or near each end, corner, entrance, or other convenient part (*k*) of the said street, place, row of houses, or line of road, the altered name or names specified in the order of the metropolitan board, and shall perform all other necessary acts for giving effect to such order; and it shall be lawful for the said metropolitan board from time to time to

Alteration of names by metropolitan board, and execution of orders by vestries and district boards.

(*i*) Throughout the repealed enactment the word "street" only is used. The words "or any place, row of houses, or on any line of road," are here introduced for the first time.

(*k*) The words "or other convenient part," are new.

order and direct that any row of houses or buildings in any street or in any line of road in the metropolis shall, for the purpose of distinguishing the same, be marked with such numbers or names as they shall deem convenient and proper for that purpose, and which they shall specify in their order in that behalf; and whenever the said metropolitan board have passed any such order as last aforesaid, they shall transmit a copy thereof to the vestry or district board in whose pariah or district the said street, place, row of houses, or line of road shall be situate, and it shall thereupon become the duty of such vestry or district board to perform all necessary acts and to take all requisite proceedings for carrying the order of the said metropolitan board into execution, and for that purpose they shall give notice to the owners or occupiers of the houses and buildings in such street, place, row of houses, or line of road to mark their several houses and buildings with such numbers or names as the said metropolitan board shall by their said order have ordered or directed, and to renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any occupier of any such house or building neglect for one week after notice from the said vestry or district board to mark such house or building with such number or name as shall be mentioned and required in the said notice, or to renew the number or name as aforesaid, he shall be liable to a penalty not exceeding 40*s.*, and the said vestry or district board may cause such number or name to be so marked or renewed, and recover the expenses thereof from the owner of such house or building by a summary proceeding before a justice of the peace; and if any person wilfully destroy, pull down, obliterate, or deface the name of any street or line of road in the metropolis, or the name or number of any house or building therein, or paint, affix, or set up any name or number to any house or building contrary to this enactment, he shall for every such offence forfeit a sum not exceeding 40*s.*; and it shall be lawful for the said ves-

try or district board to cause such name or number so painted, affixed, or set up contrary to the directions in their said notice to be obliterated or destroyed: Provided always, that the powers conferred by this section upon the metropolitan board shall extend to the city of London and the liberties thereof; and all matters by this section directed and authorized to be done by vestries and district boards shall and may be done within the city of London and the liberties thereof by the commissioners of sewers of the said city and liberties (*l*).

Persons omitting to give notice required by section 76 of 18 & 19 Vict. c. 120, liable to penalty (*m*).

LXXXVIII. If any person shall, without having given the notice directed by the seventy-sixth section of the firstly-recited Act, begin to lay the foundation of any new house or building within any parish mentioned in schedule (A.) of the said Act, or any district in schedule B. of the said Act, or to make any drain for the purpose of draining either directly or indirectly into any sewer under the jurisdiction of the vestry or board of such parish or district, he shall become liable to a penalty for every such offence not exceeding 5*l.*, and to a continuing penalty of 40*s.* for each and every day during which he shall omit to give the notice directed by the said Act.

Penalty on persons wrongfully collecting ashes, &c.(*n*)

LXXXIX. If any person or persons other than the person or persons employed by or contracting with the vestry or district board of any parish or district, or those employed by or under such person or persons, shall receive, carry away, or collect any dirt, dust, cinders, rubbish, ashes, or breeze from any houses or premises, or from any street or highway in any parish or district, or any road scrapings, refuse, or mud from any street or

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(*l*) See the case of *Daw* v. *Metropolitan Board of Works*, 31 L. J. (N. S.) C. P. 223, cited in note (*c*) to sect. 242 of 18 & 19 Vict. c. 120, *ante*.

(*m*) The section referred to imposes no penalty for an omission to give the notice directed by it.

(*n*) See sect. 127 of 18 & 19 Vict. c. 120, *ante*, vesting the property in dirt, dust, &c., in the vestries and district boards.

highway within any parish or district, it shall and may be lawful for any justice of the peace, upon complaint to him made, to grant a summons, or, if such justice shall think fit, a warrant to bring before him such offender or offenders, and such justice shall examine on oath any witness or witnesses who shall appear to give information or evidence touching such offence; and any person convicted of any such offence shall forfeit to the said vestry or district board a sum not exceeding 5*l.*, to be recovered by a summary proceeding; provided that nothing hereinbefore contained shall be deemed to apply to the removal of the refuse of any trade, manufacture, or business, or of any building materials from any house or land by the direction of the owner or occupier of such house or land.

Penalties for affixing bills on lamp posts, notice boards, &c. (*c*).

XC. Every person who shall affix or cause to be affixed any bill, notice, or paper against, or deface or disfigure any street post, lamp post, pump, or building vested in any board or vestry, or who shall remove, deface, or injure any notice board placed or set up by order of any board or vestry, or who shall pull down, obliterate, or deface any notice set up or affixed by order of any board or vestry, shall for every such offence forfeit a sum not exceeding 40*s.*, to be recovered before a justice by a summary proceeding.

Penalty for keeping swine in improper situations(*d*).

XCI. No person within any parish mentioned in schedule (A.) to the firstly-recited Act, or in any district mentioned in schedule (B.) to the said Act, shall breed,

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(*c*) These offences are not included within the 206th section of 18 and 19 Vict. c. 120. The 5th section of 57 Geo. 3, c. 29 (Metropolitan General Paving Act), only applies to the removal of the notice boards there mentioned. See section 87, p. 314, *ante*, as to penalties for defacing the names of streets.

(*d*) This enactment gives a larger discretion to the vestries and district boards than the 68th section of the 57 Geo. 3, c. 29, or the Nuisances Removal Act, for the abatement and suppression of this description of nuisance.

feed, or keep any swine in any locality, premises, or place which may be unfit for the keeping of swine, or in which the breeding, feeding, or keeping swine may create a nuisance, or be injurious to health; and any person breeding, feeding, or keeping swine in or on any such locality, premises, or place, shall be liable to a penalty not exceeding 40*s.*, and to a further penalty not exceeding 10*s.* for every day during which he shall continue such offence after notice from the vestry or district board to discontinue the same, and any such penalty may be recovered by a summary proceeding; and if in any proceeding under this enactment it shall be proved to the satisfaction of the justice or justices that any such locality, premises, or place are or is unfit for the keeping of swine, such justice or justices may prohibit the using thereof for that purpose for the future; and any person disobeying the order of any justice or justices in this behalf shall be liable to a penalty of 10*s.* for every day during such his default.

Sect. 131 of 18 & 19 Vict. c. 120, and sec. 35 of 20 & 21 Vict. c. 135, repealed. Licences granted thereunder to continue.

XCII. The one hundred and thirty-first section of the firstly-recited Act (*e*), and the thirty-fifth section of "The Metropolitan Market Act, 1857," (twentieth and twenty-first Victoria, chapter one hundred and thirty-five) (local and personal), are repealed; but all licences granted in pursuance of the provisions in the said repealed sections contained shall continue in force for the space of one year next after the day of the granting of the same respectively, and all offences heretofore committed against the provisions of the said Acts, or either of them, in relation to slaughter-houses, shall be dealt with in every respect as if this Act had not been passed.

(*e*) The repealed section provided for notices to vestries and district boards before slaughter-houses could be licensed, and the 35th section of the 20 & 21 Vict. c. 135, contained similar provisions.

Licensing cowhouses(*f*)

XCIII. From and after the 1st day of November, 1862, no place within any parish or place mentioned in the schedules to the firstly-recited Act shall be used by any person carrying on the business of a slaughterer of cattle (*g*) or cowkeeper or dairyman as a slaughter-house for the purpose of slaughtering cattle or a cowhouse or place for the keeping of cows, without a licence had for such purpose respectively from the justices of the peace assembled at a special sessions held in the division or district where such slaughter-house, cowhouse, or place is situate, and such licence shall continue in force for the period of one year from the granting thereof, and thenceforth until the special sessions to be held next after the expiration of such period, and no fee or reward exceeding 5*s.* shall be taken for any such licence; and if any person carrying on such business of a slaughterer of cattle, cowkeeper, or dairyman use as a slaughter-house or cowhouse any place within any parish or place mentioned in the schedules of the firstly-recited Act which is not so licensed, every person so offending shall for each offence be liable to a penalty not exceeding 5*l.*, of which offence the fact that cattle have been taken into such place shall be deemed sufficient *primâ facie* evidence: provided always, that before any licence for the use of any place as a slaughter-house (*h*) or cowhouse is granted as aforesaid, fourteen days' notice of the intention to apply for such licence shall be given to the vestry or district board of the parish or district in which any such place is situate, to the intent that such vestry or district board, if they think fit, may show cause

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(*f*) Cowhouses are hereby subjected to similar rules with respect to licensing as slaughter-houses.

(*g*) The repealed provision referred to places used as "slaughter-houses." The present section alters that expression, and substitutes "any place be used by any person carrying on the business of a slaughterer of cattle, as a slaughter-house, &c."

(*h*) This incorporates the words "by any person carrying on the business of a slaughterer of cattle," occurring in the earlier part of the section.

against the granting of any such licence, and also seven days' notice previous to such special sessions being held of the intention to apply for such licence shall be given to the clerk of the justices for such division: provided, that nothing in this Act contained shall extend to slaughter-houses erected or to be erected in the metropolitan cattle market under the authority of the Metropolitan Market Act, 1851, or the Metropolitan Market Act, 1857 (*i*).

Month's notice to be given of applying for licence for keeping slaughter-house.

XCIV. Before any licence for the keeping or using of any house or place within the metropolitan police district (*k*) as a licensed slaughtering-house or place for the purpose of slaughtering or killing horses or other cattle not killed for butchers' meat shall be granted by any quarter sessions of the peace under the provisions of the Act of the session holden in the twenty-sixth year of the reign of His Majesty King George the Third, chapter seventy-one, or of the Act of the session holden in the seventh and eighth years of Her present Majesty, chapter eighty-seven (*l*), or any Act amending either of the said Acts, one month's previous notice of the intention to apply for such licence shall be given to the vestry or district board of the parish or district in which such house or place is situate, to the intent that such vestry or district board, if they think fit, may show cause against the grant of such licence.

Vestries and district boards to contract for removal of manure from

XCV. It shall be lawful for every vestry and district board, if they in their discretion think fit, to appoint and employ a sufficient number of persons, or to contract with any company or persons, for collecting and remov-

(*i*) The Acts referred to are the 14 & 15 Vict. c. 61, and the 20 & 21 Vict. c. 21.

(*k*) See as to limits of metropolitan police district, 10 Geo. 4, c. 44, s. 4, and schedule, and 2 & 3 Vict. c. 47, s. 2.

(*l*) See 12 & 13 Vict. c. 92.

stables and cowhouses.

ing the manure and refuse straw from such stables and cowhouses within their parish or district, the occupiers of which may signify their consent in writing to such removal; provided that such consent shall not be withdrawn or revoked without one month's previous notice to the vestry or district board, and that no person shall be hereby relieved from any penalty or penalties to which they may be subject for placing dung or manure upon the footways or carriageways of any parish or district, or for having any accumulation or deposit of manure so as to be a nuisance or injurious to health (*a*).

Vestry or district board may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent (*b*).

XCVI. The two hundred and seventeenth, two hundred and eighteenth, and two hundred and nineteenth sections of the firstly-recited Act are hereby repealed; and in lieu thereof be it enacted, that it shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited Act or this Act either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by the recited Act and this Act; and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to

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(*a*) See 57 Geo. 3, c. 29, s. 64, *post*, appendix, and s. 60 of Metropolitan Police Act, 2 & 3 Vict. c. 47, and Nuisances Removal Act, 18 & 19 Vict. c. 121, s. 8, *et seq.*

(*b*) The 217th sect. hereby repealed, compelled the vestry, &c. to obtain payment from the occupier; the 218th limited the amount of rent which the occupier should be called on to pay; and the 219th declared that contracts between landlord and tenant with respect to the payment of rates, dues, and sums of money, should remain unaffected. These sections are in substance here re-enacted in this and the following section, with the additional provision that the vestries and district boards may, at their option, proceed against the owner in the first instance.

time becoming due in respect of the said premises as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Agreements between landlord and tenant not to be affected.

XCVII. If the owner or landlord of any premises from whose rent any amount shall be deducted in respect of any costs, charges, or expenses payable under the firstly-recited Act or this Act shall hold the premises in respect of which the amount of such costs, charges, or expenses shall be paid at a rent not less than the rackrent, he shall be entitled to deduct the whole amount paid by him on account of such costs, charges, or expenses from the rent

Deduction by owner paying rent (c) where amount of expenses deducted from rent paid to him.

(c) This enables the person in immediate receipt of the rackrent to deduct a proportionate amount of those expenses, when he himself, as is frequently the case, pays rent. A similar provision was contained with respect to the payment of special and improvement rates under the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, s. 88.

payable by him to his superior landlord; and if he holds at a rent less than the rackrent, he shall be entitled to deduct from the rent so payable by him a sum bearing the same proportion to the amount so paid by him on account of such costs, charges, or expenses as his rent shall bear to the rackrent; and if the owner or landlord from whose rent any deduction be made under the provision last aforesaid be himself liable to the payment of rent for the premises in respect of which the deduction shall be made, and hold such premises for a term of which less than twenty-one years shall be unexpired, but not otherwise, he may deduct from the rent so payable by him a sum bearing the same proportion to the sum deducted from the rent payable to him as the rent payable by him shall bear to the rent payable to him, and so on in succession with respect to every landlord of the same premises both receiving and liable to pay rent in respect thereof, and holding the same for a term of which less than twenty-one years shall be unexpired as aforesaid: Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him: Provided also, that nothing herein contained shall be taken to affect any contract (*d*) made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Roads, &c. laid out as streets to be of full width

XCVIII. No existing road, passage, or way being of a less width than forty feet shall be hereafter formed or laid out for building as a street for the purposes of car-

(*d*) See, as to contracts between owners and occupiers, note (*k*) to sect. 219 of 18 & 19 Vict. c. 120, *ante*, p. 170.

riage traffic, unless such road, passage, or way be widened to the full width of forty feet, the measurement of the width of such street to be taken half on either side from the centre or crown of the roadway to the external wall or front of the houses or buildings erected or intended to be erected on each side thereof; but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width shall be measured up to the fence or boundary dividing or intended to divide such forecourts or spaces from the public way, or for the purposes of foot traffic only, unless such road, passage, or way be widened to the full width of twenty feet, measured as aforesaid, or unless such streets respectively shall be open at both ends, from the ground upwards; and any road, passage, or way hereafter to be formed or laid out for either of the purposes aforesaid shall be deemed to be a new street, and become subject to all the provisions of the recited Acts and this Act (*f*), and to the provisions and penalties of and under any byelaws made or to be made in pursuance thereof in relation to sewerage, drainage, or paving, and to width, construction, surface, inclination, and other requirements and particulars.

of forty feet for carriage traffic, and twenty feet for foot traffic (*e*).

XCIX. Provided that it shall be lawful for the metropolitan board of works to permit the formation of any such street of less width than hereinbefore provided, or with one opening only, should they under any special circumstances deem it equitable and expedient so to do.

Metropolitan board may permit formation of streets of less width, &c.

(*e*) The power of making byelaws conferred upon the metropolitan board by the 202nd section of 18 & 19 Vict. c. 120, is for regulating the plans, level, &c., of *new* streets and roads, and the byelaws promulgated by the board in pursuance of this authority applies to *new* streets only. This provision subjects to the same incidents as attach to new streets, old roads, and lanes newly laid out for building, and represses the mischief arising from building in narrow and ill-ventilated situations.

(*f*) See sects. 105 and 202 of 18 & 19 Vict, c. 120, *ante*, and sects. 52 and 77 of this Act.

Power to vestries, &c. to borrow monies for the improvement of streets (*g*).

C. It shall be lawful for every vestry and district board mentioned in clause one hundred and eighty-three of the first-recited Act to exercise the power to borrow monies therein mentioned, with the sanction of the metropolitan board of works granted under their common seal, for the purpose of enabling such vestry or district board to make, extend, widen, alter, or improve any street, road, or way, for facilitating the passage and traffic within the parish or district for which such vestry or district board is appointed, or for the purpose of contributing to and of joining with the metropolitan board or with any other board or persons in any such improvement.

Any vestry or district board may put an end to any powers of appointment of inspectors of weights and measures existing under any local Act in their parish or district.

CI. If any vestry, commissioners, or other body in whom any duties or powers in relation to the appointment of inspectors or examiners of weights and measures are now vested under any local Act, charter, or otherwise, desire that such duties or powers should cease, and that inspectors of weights and measures appointed or to be appointed at general or quarter sessions, pursuant to the provisions of the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter sixty-three (*h*), and of any Act amending the same, should act in and for the parts to which such local Act extends, so far as regards their parish or district, and a resolution to that effect be passed by a majority (*i*), at a meeting of the vestry or board specially convened for

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(*g*) This empowers vestries and district boards to borrow monies for the purpose of effecting the improvements mentioned in the 72nd section. See note (*d*) to that section, *ante*, p. 298.

(*h*) See 5 & 6 Will. 4, c. 63, s. 17 *et seq.*, as to the appointment, &c., of inspectors of weights and measures, and as to the districts for which examiners of weights and balances might be appointed under the earlier Act, 37 Geo. 3, c. 143. *R.* v. *Justices of Devon*, 1 B. & Ald. 588.

(*i*) See *R.* v. *Overseers of Christchurch*, and *in re Eynsham*, cited in note to sect. 28 of 18 & 19 Vict. c. 120, *ante*, p. 18, as to what constitutes a majority.

the purpose of considering the question of determining such duties or powers, of which not less than fourteen days' notice shall have been given, notice of such resolution shall be given by the clerk of such vestry or board to the clerk of the peace for the county in which their parish or district is situate; and such notice shall be laid by such clerk of the peace before the next court of general or quarter sessions of the peace for such county; and from and after the receipt of such resolution by such justices the appointment, and all powers of appointment, of any inspector or examiner appointed under any such local Act shall cease so far as regards such parish or district, but not so as to affect any pending proceedings for penalties or otherwise; and all the provisions of the said Act of the session holden in the fifth and sixth years of King William the Fourth, chapter sixty-three, and of any Act amending the same, shall apply to such parish or district as if such local Act were not in force therein.

Penalties may be recovered in manner provided by 11 & 12 Vict. c. 43 (*k*).

CII. Every penalty or forfeiture imposed by this Act, and made recoverable by a summary proceeding, may be recovered before any justice of the peace in manner provided by the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-three.

Expenses of obtaining this Act to be included among general expenses of executing Acts (*l*).

CIII. The expenses incurred by the metropolitan board of works in applying for and passing this Act, and preparatory or incident thereto, shall be and are hereby included among the general expenses of the said board in the execution of the firstly-recited Act, and may be defrayed accordingly; and the expenses

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(*k*) See 18 & 19 Vict. c. 120, *ante*, as to recovery of penalties by summary proceedings under Jervis's Act, 11 & 12 Vict. c. 43. The penalties for any breach of the byelaws under sect. 83, *ante*, are, by virtue of that section, and sect. 202 of 18 & 19 Vict. c. 120, recoverable by a similar proceeding.

(*l*) The expenses of the metropolitan board in relation to the passing of the Act are to be raised in manner prescribed by

incurred by any vestry or district board in relation to this Act shall be and are hereby included among the other expenses incurred by that vestry or district board in the execution of the firstly-recited Act, and may be defrayed accordingly.

Provision as to penalties under 227th section of 18 & 19 Vict. c. 120, extended to damages, &c.

CIV. The provision in the two hundred and twenty-seventh section of the firstly-recited Act for the recovery of penalties and forfeitures imposed by the said Act is hereby extended to any damages, costs, or expenses payable or recoverable under the said recited Acts or this Act; and any such damages, costs, or expenses, the recovery whereof is not otherwise provided for, may be recovered by summary proceedings in manner directed by the said section.

Application of penalties (*a*).

CV. The two hundred and thirty-fourth section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that all penalties or forfeitures payable or recoverable under the firstly-recited Act or this Act, and all penalties or forfeitures recovered by any vestry or district board acting as the local authority for the execution within their respective parish or district of "The

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sects. 170, 172, 174, 158, and 161 of original Act, therefore out of the *sewers rate*, but those of the vestries and district boards must be paid out of the *general rate*.

(*a*) The 234th section of 18 & 19 Vict. c. 120 (hereby repealed), provided that all sums which might be recovered by any vestry on account of any penalty, should be applicable to their general expenses; but by section 47 of 2 & 3 Vict. c. 71 (Metropolitan Police), it was enacted that where by any Act or Acts any penalties, &c., were or should thereafter be made recoverable in a summary manner before any justice, &c., and by such Act or Acts the same should be made payable to Her Majesty, or to any body corporate, or to any person or persons whomsoever, save the informer, &c., or any party aggrieved, the same, if recovered before any of the metropolitan police magistrates, should be adjudged to be paid to the receiver of the metropolitan police district. It was held under the 17 & 18 Vict. c. 38 (Suppression of Gaming Houses), that where a conviction took place under that Act at a metropolitan police

Nuisances Removal Act, for England, 1855" (*b*), shall go and be paid in manner hereinafter mentioned, anything contained in an Act made and passed in the session holden in the second and third years of the reign of Her present Majesty, chapter seventy-one, or in any other Act or Acts to the contrary notwithstanding; that is to say, one half shall go to the informer, and the remainder shall go to the vestry or district board of the parish or district in which the offence was committed, or to the metropolitan board of works, in case the injury shall have been sustained by or the offence committed in respect of that board; or if such vestry or district board or the metropolitan board of works be the informers, then the whole of the penalty recovered shall go to them respectively, and all sums which shall go to or be recovered by any board or vestry on account of any penalty or forfeiture shall be paid to their treasurer, or into such bank to their account as they may direct, and shall be applicable towards the general expenses of such board or vestry; provided that in every case where any board or vestry are liable to any penalty or forfeiture, the whole of such penalty or forfeiture shall go to the informer.

Notice of action, &c. (*c*).

CVI. No writ or process shall be sued out against or served upon, and no proceeding shall be instituted against the metropolitan board of works, or any vestry or district board, or their clerk, or any clerks, surveyor, contractor, officer, or person whomsoever, acting under

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court, the receiver of the metropolitan police district was entitled to one half of the penalty directed by the Act to be applied in a aid of the poor rates; *Wray* v. *Ellis*, 28 L. J. (N. S.) M. C. 45. The section as now framed is intended to secure the penalty to those bodies whose property has been injured by the offence, including the metropolitan board, who were not within the repealed enactment.

(*b*) See 18 & 19 Vict. c. 121, s. 38, *post*, Appendix.

(*c*) This section is founded on the 127th section of the Metropolitan Sewers Act, 1848, 11 & 12 Vict. c. 112, but in

their or any of their directions, for anything done or intended to be done under the powers of such board or vestry under the said Acts or this Act (*c*), until the expiration of one calendar month next after notice in writing shall have been served upon such board or vestry, or where the action or proceeding shall be against such officer or other person acting under their or any of their directions shall have been delivered to him or left at his office or place of abode, stating the cause of action or grounds of the proceeding or demand, and the name and place of abode of the intended plaintiff or claimant and of his attorney or agent in the cause or proceeding; and upon the trial of any action the plaintiff shall not be permitted to go into evidence of any cause of action except such as is stated in the notice so served or delivered, and unless such notice be proved the jury shall find for the defendant; and every such action and proceeding shall be brought or commenced within six months next after the accrual of the cause of action or ground of claim or demand, and not afterwards, and every such action shall be laid and tried in the county or place where the cause of action accrued, and not elsewhere; and the defendant shall in any such action be at liberty to plead the general issue, and give the said recited Acts and this Act and all special matter in evidence thereunder; and it shall be lawful for the board or vestry, or any person to whom such notice is given as aforesaid, to tender amends to the plaintiff, his attorney or agent, at any time within one calendar

Limitation.

Venue.

General issue.

Tender of amends.

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addition to the words "writ or process shall be sued out," it uses the words "no proceeding shall be instituted." The expression, therefore, must apply to proceedings other than those to which the words "writ or process" would refer. The context seems to preclude its application to parties claiming compensation under sects. 69 and 135 of 18 & 19 Vict. c. 120, which are to be settled by arbitration in manner directed by the Lands Clauses Act.

(*c*) As to the meaning of these words, see *Newton* v. *Ellis*, 24 L. J. (N. S.) Q. B. 337.

month after service of such notice, and in case the same be not accepted to plead such tender in bar, and (by leave of the court) with the general issue or other plea or pleas; and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinue, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, it shall be lawful for the defendant, by leave of the court, at any time before trial, to pay into court under plea such sum of money as he may think proper, and (by the like leave) to plead the general issue or other plea or pleas, any rule of court or practice to the contrary notwithstanding.

Penalties to be proceeded for within six months (*d*).

CVII. The two hundred and thirty-third section of the firstly-recited Act is hereby repealed; and in lieu thereof be it enacted, that no person shall be liable for the payment of any penalty or forfeiture under the recited Acts or this Act, or any byelaw made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting such offence have been made before such justice within six months next after the commission or discovery of such offence.

Act not to apply to things done before its passing, except, &c.

CVIII. Except as herein specially provided, nothing herein contained shall in any way prejudice or affect any act, matter, or thing made, done, or commenced prior to the passing of this Act.

No further liability to attach to

CIX. Nothing in this Act contained shall be held to make the several places named in schedule (C.) of the

(*d*) There was a contradiction between the text of the repealed section and the marginal note, the former mentioning three and the latter six months, as the period within which the complaint must have been made.

places named in sched. (C.) of 18 & 19 Vict. c. 12 (*e*).

firstly-recited Act liable to any payment or assessment to which they would not have been liable if this Act had not been passed.

Acts to be construed as one Act.

CX. The said recited Acts and this Act shall be construed together as one Act.

Short titles.

CXI. The recited Acts may be respectively cited for all purposes as "The Metropolis Management Act, 1855," "The Metropolis Management Amendment Act, 1856," and "The Metropolis Management Amendment Act, 1858;" and this Act may be cited for all purposes as "The Metropolis Management Amendment Act, 1862."

Interpretation of terms.

CXII. In the construction of the recited Acts and this Act the term "metropolis" shall be deemed to include the city of London and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to the firstly-recited Act; the word "drain" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the 1st day of January, 1856, pursuant to the order or direction or with the sanction or approval of the metropolitan commissioners of sewers (*f*); the expression "water company" shall mean and include any of

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(*e*) The only assessments to which these places are liable are those of the Metropolitan Board for the Metropolis Main Drainage Rate, under the 11th section of the 21st & 22nd Vict. c. 104.

(*f*) The definition of the word "drain," sect. 250 of the Metropolis Management Act, 1855, *ante*, included the drainage of a block of houses by a combined operation under the order of any vestry or district board, but did not extend to combined drainage laid down before the passing of that Act. That species of drainage, therefore, came within the definition of the word "sewer" in the section referred to, and as such would

the companies enumerated in the twenty-ninth section of the Act of the session of the fifteenth and sixteenth years of the reign of Queen Victoria, chapter eighty-four, for the making better provision respecting the supply of water to the metropolis, and also any other company, board, or commission, association, person, or partnership, corporate or unincorporate, for the time being supplying the metropolis or any part thereof with water for domestic use; the word "cattle" shall include sheep, lambs, and swine; the word "street" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any mews and a part thereof; the expression "new street" shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word "pave" shall apply to and include the formation of the roadway or footway of any street; the word "clerk" shall include any officer called or to be called "secretary;" the word "surveyor" shall include any officer called or to be called "engineer;" the word "print" shall apply to and include every mode of taking impressions, whether by letter press, stereotype, lithography, or otherwise.

Finsbury Park Act.

CXIII. Whereas an Act was passed in the session of parliament holden in the twentieth and twenty-first

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probably have been maintainable by vestries and district boards out of the public rates. The new definition declares them to be drains, and, as a consequence, subjects them to the incidents applicable to private works.

continued till 1863 (*g*).

years of Her Majesty, "to enable the Metropolitan Board of Works to form a Park for the Northern Suburbs of the Metropolis, to be called Finsbury Park:" and whereas it is expedient to continue the said Act for such period as herein mentioned: Be it therefore enacted, that the said Act shall be continued in force until the 17th day of August, 1863, in like manner as if the time so limited had been the time limited by the said Act of the twentieth and twenty-first years of Victoria, chapter one hundred and twenty.

Amendment of 18 & 19 Vict. c. 120, s. 103.

CXIV. There shall be repealed so much of the one hundred and ninety-third section of an Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, intituled "An Act for the better Local Management of the Metropolis," as provides that the auditor of the accounts of the metropolitan board shall be paid by such board not exceeding five guineas for every day he is fully employed on such audit, and all expenses he is put to in the auditing of such accounts; provided always, that such payment shall not exceed fifty guineas: and in lieu thereof, be it enacted, that the auditor of the accounts of the metropolitan board shall be paid by such board a sum not exceeding two guineas for every day that he is fully employed on such audit, and all expenses that he is put to in the auditing of such accounts, provided that such payments do not in the whole exceed one hundred guineas (*h*).

(*g*) By the 27th section of that Act, the powers for the compulsory purchase of land could not be exercised after the expiration of five years from its passing, 17th August, 1857.

(*h*) By the Metropolis Local Management Amendment Act, 1858 (21 & 22 Vict. c. 104), s. 8, the auditor is required to cause to be prepared a separate abstract and statement of the expenditure under that Act; and a similar provision is contained in the 25 & 26 Vict. c. 93, Thames Embankment. See s. 47, *post*, in the Appendix.

CXV. From and after the passing of this Act all duties, powers, and authorities under the Local Act of the tenth year of George the Fourth, chapter sixty-eight, now remaining vested in the committee of management of the affairs of the parish of Saint Paul, Covent Garden, shall cease to be so vested, and shall become vested in and be performed and exercised by the vestry of such parish, elected under the Act of the eighteenth and nineteenth years of Victoria, chapter one hundred and twenty, and that the said committee shall cease and be determined, and no new appointment or election of such committee shall take place.

Certain powers under Local Act 10 Geo. 4, c. 68, respecting parish of Saint Paul, Covent Garden, transferred.

CXVI. It shall not be lawful for the metropolitan board of works, or for any vestry or district board, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exerciseable by the Queen's most excellent Majesty in right of her crown, or in right of the duchy of Lancester, without the consent in writing of the commissioners for the time being of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, first had and obtained for that purpose, which consent such commissioners are hereby respectively authorized to give, or without the consent in like manner of the chancellor of the said duchy; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's majesty, her heirs or successors, in right of her crown or in right of her duchy of Lancaster: Provided always, (i) that nothing herein

Saving rights of the crown and the duchy of Lancaster.

(i) This proviso refers to the power of constructing works for the purposes of the main drainage under the bed and soil of the river Thames, given by the 2nd section of the 21 & 22 Vict. c. 104, subject to the conditions imposed by the 27th & 28th sections of the same Act. See Thames Conservancy Act, 1857, as to the rights of the crown in respect of the foreshore of the Thames.

contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the metropolitan board of works relating to the main drainage of the metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed.

Saving rights of the crown in respect of the duchy of Cornwall.

CXVII. It shall not be lawful for the metropolitan board of works, or for any vestry or district board, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exerciseable by the Queen's most excellent Majesty in right of her duchy of Cornwall, without the consent in writing of two or more of the principal officers of the duchy, which consent such principal officers of the duchy are hereby authorized to give; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's Majesty, her heirs or successors, in respect of the said duchy: Provided always, that nothing herein contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the metropolitan board of works relating to the main drainage of the metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed (*k*).

(*k*) See note (*i*) to last section.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A.)

LIST OF CERTAIN SECURITIES AND LIABILITIES OF METROPOLITAN COMMISSIONERS OF SEWERS.

Name of Lender, Party holding Security, or for whose Life Annuity granted.	Amount of Loan, or Value of Annuity.			Date of Loan or Grant of Annuity.
	£	s.	d.	
John Newberry George - -	3,000	0	0	11th April, 1823.
Mary Robinson - - -	2,000	0	0	12th March, 1824.
G. B. Hart (executors of) - -	1,000	0	0	"
B. D. Kershaw - - -	1,000	0	0	"
Rev. E. D. Kershaw - -	1,000	0	0	"
Samuel Kershaw - - -	2.000	0	0	4th June, 1824.
T. W. Meller (executors of) -	3,000	0	0	12th Dec. 1828.
Do. (do.) - -	9,500	0	0	13th January, 1832.
J. Hicks (executors of) - -	5,000	0	0	8th March, 1833.
John Hobbs - - - -	2,000	0	0	27th May, 1840.
J. G. Hall - - - -	1,500	0	0	10th Sept. 1847.
Helena Balcombe (trustees of) -	1,500	0	0	"
Philip Green - - - -	1,000	0	0	"
James Courthope Peache - -	10,000	0	0	2nd May, 1851.
Royal Exchange Assurance Corporation - - -	20,000	0	0	17th Sept. 1852.
Rock Life Assurance Company -	228,800	0	0	Between 1st March, 1854, and 1st Feb. 1855.
ANNUITIES.				
(Estimated value, 1st Jan. 1856.)				
Charlotte Swabey - - -	210	10	0	19th April, 1816.
William Edwards - - -	961	18	7	12th April, 1822.
Sarah Dorothy Woodifield -	85	19	0	10th October, 1823.
Louisa Turner - - - -	1,039	11	4	"
Sarah Dorothy Hunt - -	217	13	11	27th August, 1824.
Maria Woodroffe - - -	259	13	11	22nd October, 1824.
Carolina Jeremy - - -	544	3	8	28th July, 1826.
Margaret Symons - - -	70	4	2	
TOTAL - - £	295,689	14	7	

SCHEDULE (B.)

Apportionment of Debt on Loan from the Clergy Mutual Assurance Society.

Parishes and Places.	Amount charged on each Parish or Part.					
	£	s.	d.	£	s.	d.
Saint Marylebone	-	-	-	10,563	0	3
Saint Pancras	-	-	-	7,466	4	7
Lambeth	-	-	-	5,181	16	6
Saint George, Hanover Square	-	-	-	9,449	0	3
Saint Mary, Islington	-	-	-	4,618	18	9
Saint Leonard, Shoreditch	-	-	-	2,658	15	6
Paddington	-	-	-	4,544	19	0
Saint Matthew, Bethnal Green	-	-	-	1,103	13	8
Saint Mary, Newington, Surrey	-	-	-	2,008	4	8
Camberwell	-	-	-	2,219	12	6
Saint James, Westminster	-	-	-	4,348	6	3
Saint James and Saint John, Clerkenwell	-	-	-	2,274	5	0
Chelsea	-	-	-	2,290	7	2
Saint Mary Abbotts, Kensington	-	-	-	2,560	17	2
Saint Luke, Middlesex	-	-	-	1,726	0	6
Saint George the Martyr, Southwark	-	-	-	1,317	12	3
Bermondsey	-	-	-	1,391	12	0
Saint George in the East	-	-	-	1,754	11	5
Saint Martin in the Fields	-	-	-	2,642	8	3
Hamlet of Mile End Old Town	-	-	-	1,589	2	6
Rotherhithe	-	-	-	676	9	2
Saint John, Hampstead	-	-	-	814	2	4
Whitechapel district.						
Saint Mary, Whitechapel	-	-	1,139 14 1			
Christchurch, Spitalfields	-	-	370 13 2			
Saint Botolph Without, Aldgate	-	-	488 1 11			
Holy Trinity, Minories	-	-	63 0 4			
Precinct of St. Katharine	-	-	169 2 3			
Hamlet of Mile End New Town	-	-	149 13 4			
Liberty of Norton Folgate	-	-	81 18 8			
Old Artillery Ground	-	-	42 8 11			
District of the Tower	-	-	28 17 6			
				2,533	10	2
Westminster District.						
Saint Margaret and Saint John the Evangelist	-	-	-	2,095	5	2

Parishes and Places.	Amount charged on each Parish or Part.					
	£	s.	d.	£	s.	d.
Greenwich District.						
Saint Paul, Deptford, including Hatcham	1,048	3	10			
Saint Nicholas, Deptford	211	7	10			
Greenwich	1,268	7	2			
				2,527	18	10
Wandsworth District.						
Clapham	871	19	11			
Tooting Graveney	103	15	8			
Streatham	514	14	10			
Saint Mary, Battersea, excluding Penge	836	1	2			
Wandsworth	464	0	2			
Putney, including Roehampton	369	19	9			
				3,160	11	6
Hackney District.						
Hackney	2,451	0	4			
Saint Mary, Stoke Newington	283	7	10			
				2,734	8	2
Saint Giles District.						
Saint Giles in the Fields and Saint George, Bloomsbury	-	-	-	2,772	2	5
Holborn District.						
Saint Andrew, Holborn above Bars, and Saint George the Martyr	1,395	3	10			
Saint Sepulchre, in the county of Middlesex	187	11	10			
Saffron Hill, &c.	294	11	4			
Liberty of Glasshouse Yard	38	9	11			
				1,915	16	11
Strand District.						
Saint Anne, Soho	958	7	5			
Saint Paul, Covent Garden	458	17	10			
Precinct of the Savoy	90	9	6			
Saint Mary-le-Strand	157	1	4			
Saint Clement Danes	897	15	9			
Liberty of the Rolls	169	18	4			
				2,732	10	2
Fulham District.						
Saint Peter and Saint Paul, Hammersmith	713	9	0			
Fulham	501	19	6			
				1,215	8	6

Parishes and Places.	Amount charged on each Parish or Part.		
	£ s. d.	£ s. d.	
Limehouse District.			
Saint Anne, Limehouse	586 7 3		
Saint John, Wapping	373 11 6		
Saint Paul, Shadwell	325 12 7		
Hamlet of Ratcliffe	463 14 3		
		1,749 5 7	
Poplar District.			
All Saints, Poplar	1,637 9 10		
Saint Mary, Stratford-le-Bow	286 1 2		
Saint Leonard, Bromley	383 6 9		
		2,306 17 9	
Saint Saviour's District.			
Christchurch	671 3 5		
Saint Saviour (including the Liberty of the Clink)	1,030 10 10		
		1,701 14 3	
Plumstead District.			
Charlton next Woolwich	311 16 1		
Plumstead	300 9 11		
Eltham	157 9 9		
Lee	248 7 9		
Kidbrooke	90 18 0		
		1,109 1 6	
Lewisham District.			
Lewisham, including Sydenham	1,149 19 7		
Hamlet of Penge	309 13 9		
		1,459 13 4	
Saint Olave District.			
Saint Olave	536 6 1		
Saint Thomas, Southwark	47 12 6		
Saint John, Horsleydown	438 12 10		
		1,022 11 5	
The Charter House	- - -	20 11 10	
Gray's Inn	- - -	142 13 10	
TOTAL	- - -	105,000 0 0	

SCHEDULE (C.)

Form of assessment.

Resolved, That this board do and they do hereby ascertain the sums which ought, in their judgment, to be charged upon the several parts of the metropolis, and other parts charged with mortgages, debts, and liabilities at the expiration of the Act of the 11th and 12th years of Her Majesty, chapter 112, for defraying the expenses of the said board, in the execution of the Metropolis Local Management Act, 1855, for the year ending ——, 18—, under and pursuant to the said Act and the Acts for amending the same; and ordered that such sums be assessed as hereinafter specified, and they are hereby assessed upon such parts respectively, and that precepts under the common seal of the board do issue for obtaining payment thereof:—

Parishes, Districts, or Parts.	Sums assessed.
[*Here insert the Parishes, Districts, Parts of Parishes, &c., as for instance,*]	
City of London, the whole -	
Parish of ——, the whole	
That part of the parish included in former —— district [*or* level *or* division] - -	
That part of the parish included in former —— district [*or* level *or* division] - -	
[*And so on, adding the names of the other parishes, districts, parts of parishes, &c., on which sums are assessed, and the sums assessed.*]	

Form of precept demanding one sum assessed upon the whole of a parish or other place.

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name*].

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said vestry [*or* chamberlain, *&c.*], and do hereby require you to pay to —— on or before the ——day of —— now next ensuing, the sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon the said parish [*or* city, *&c.*], for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said parish [*or* city, *&c.*], for such purpose, under and in pursuance of the provisions of the said Act, and the Acts for amending the same in that behalf.

Dated this —— day of —— 18—.

(L. S.)

Form of precept demanding an amount made up of a sum assessed upon the whole of a parish or other place, and of a sum or sums assessed upon a part or parts of such parish or place.

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name*].

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said vestry, and do hereby require you to pay to —— on or before the —— day of —— now next ensuing, the sum of —— pounds —— shillings and —— pence, the sum of —— pounds —— shillings and —— pence, part of the said sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon the whole of the said parish for defraying the expenses of the said board in the ex-

ecution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

* The sum of —— pounds —— shillings and —— pence, other part of the said sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon that part of the said parish of —— which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the —— sewerage district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act, and the Acts for amending the same in that behalf. [*Where distinct sums are assessed upon other parts of the same parish, that portion of the preceding form commencing at * may be repeated in each case.*]

Dated this —— day of —— 18—.

(L. S.)

Form of precept to a district board of works demanding a sum assessed upon the whole of a parish within the district, or an amount consisting of a sum assessed upon the whole parish, and a sum or sums assessed upon a part or parts of the same parish.

To the board of works for the —— district.

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said district board of works for the said —— district, and do hereby require you to pay to —— on or before the —— day of —— now next ensuing, * the sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon the parish of —— within the said —— district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said parish for such purpose, under and in pursuance of

the provisions of the said Act and the Acts for amending the same in that behalf.

"[*Where the amount demanded is made up of a sum assessed upon a whole parish within the district, and also of a sum or sums assessed on a part or parts of the same parish, the form may be as follows:*—

The sum of —— pounds —— shillings and —— pence, part of the said sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon the whole of the parish of —— within the said district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

The sum of —— pounds —— shillings and —— pence, other part of the said sum of —— pounds —— shillings and —— pence, being the sum which ought, in the judgment of the said board, to be charged upon that part of the said parish of —— within the said —— district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the —— separate sewerage district, for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Act for amending the same in that behalf.]

Dated this —— day of —— 18—. (L. S.)

Form of precept to a district board of works, where sums are assessed upon several parishes and parts of parishes within the district.

To the board of works for the —— district.

By virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the Metropolis,"

The metropolitan board of works do issue this their precept under their common seal to you the said board of works for the said —— district, and do hereby require you to pay to the —— on or before the —— day of —— now next ensuing, the sum of —— pounds —— shillings and —— pence, being the amount of the several and respective sums of money hereunder set down and expressed opposite to and against the

several parishes and parts of parishes within your said district hereinafter mentioned, which said several sums ought, in the judgment of the said board, to be charged upon the said parishes and parts of parishes respectively for defraying the expenses of the said board in the execution of the said Act, and which they the said board did, on the —— day of —— 18—, ascertain and assess upon the said several parishes and parts of parishes for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf:

Names of parishes, parts of parishes, &c.	£	*s.*	*d.*	£	*s.*	*d.*
The parish [*or* hamlet, precinct, *&c.*] of —— The whole of the parish. That part of the said parish [*or* hamlet, precinct, *&c.* of ——], within the said —— district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the —— sewerage district. [*And so on in the case of each parish, part of a parish, &c.*]						

Dated this —— day of —— 18—.

(L. S.)

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APPENDIX.

24 & 25 VICT. CAP. 42.

AN ACT

TO CONTINUE THE DUTIES LEVIED ON COAL AND WINE BY THE CORPORATION OF LONDON.

22ND JULY, 1861.

WHEREAS by an Act passed in the session holden in the fifth and sixth years of the reign of King William and Queen Mary, chapter ten, intituled "An Act for the Relief of the Orphans (*a*) and other Creditors of the City of London," it was enacted, amongst other things, that towards raising a fund as therein mentioned a duty of 4*s.* per tun should be imposed upon all sorts of wines (*b*) whatsoever which, from and after the 4th day of June, 1694, should be imported into the port of the city of London, or the members thereof, by way of merchandise, over and above the then present duties charged or chargeable thereupon, and so proportionably for a greater or lesser quantity, which said duty should from time to time for

(*a*) By the shutting of the Exchequer in the close of Charles the Second's reign, funds to the amount of 750,000*l.*, consisting of orphans' monies which had been invested by the court, were wholly lost to the corporation, and the mode of paying off the orphan's claims was settled by Act of parliament 5 & 6 W. & M. c. 10, by which, besides various other charges upon the city estates, an annual sum of 2,000*l.* was directed to be raised from the present property of the inhabitants, and collected in each ward, but the orphan's claims having since been satisfied, the charges upon the corporate estates have been applied in various public improvements; *Pulling's* Laws of the City and Port of London, 114. A portion of the duties which had formerly been a part of the Orphan Fund, were continued by Act of parliament, and the fund was from time to time charged with various amounts for the purpose of making the approaches to London Bridge and effecting other public improvements. See the course of legislation with regard to these duties described in the Third Report from Select Committee on Metropolitan Local Taxation, with minutes of evidence, ordered by the House of Commons to be printed, 2nd May, 1861.

(*b*) See origin and history of the duties on wines in the port of London, *Pulling's* Laws of the City and Port of London, p. 395, Notes.

ever be paid by the importer thereof unto the mayor, commonalty, and citizens of the city of London, hereinafter called "the Corporation of London:" And whereas by the Acts hereinafter mentioned, and hereinafter referred to as the Coal Duties Acts (that is to say):

1 & 2 W. 4, c. 76.

1. An Act passed in the session of Parliament holden in the first and second years of the reign of His late Majesty King William the Fourth, chapter seventy-six, intituled, "An Act for Regulating the Vend and Delivery of Coals in the Cities of London and Westminster, and in certain Parts of the Counties of Middlesex, Surrey, Kent, Essex, Hertfordshire, Buckinghamshire, and Berkshire:"

1 & 2 Vict. c. 101.

2. An Act passed in the session of Parliament holden in the first and second years of the reign of Her present Majesty, chapter one hundred and one, intituled, "An Act to continue for Seven Years an Act for Regulating the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties:"

8 & 9 Vict. c. 101.

3. An Act passed in the session of Parliament holden in the session of the eighth and ninth years of the reign of Her said Majesty, intituled, "An Act to continue until the 5th day of July, 1862, the Acts for Regulating the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties; and to alter and amend the said Acts:"

14 & 15 Vict. c. 146.

4. An Act passed in the session of Parliament holden in the fourteenth and fifteenth years of the reign of Her said Majesty, intituled, "An Act to amend the Acts relating to the Vend and Delivery of Coals in London and Westminster, and in certain Parts of the adjacent Counties; and to allow a drawback on Coals conveyed beyond certain Limits:" and which Acts are hereinafter referred to as the Coal Duties Acts,

or some or one of such Acts, two several duties of 1*d.* (*a*), and 1*s.* (*b*) per ton are authorized to be levied by the corporation

(*a*) The 1*d.* duty was imposed by the 47 Geo. 3, c. 68, and it was continued by succeeding Acts till 5th July, 1862. This duty was originally imposed in order to establish a coal market, and the 8 & 9 Vict. c. 101, continued it for the purpose of providing a fund for the opening of poor and densely populated districts in the metropolis, or for keeping open spaces in the immediate vicinity of the same, as a means of promoting the public convenience, recreation, and health.

(*b*) This duty consists of an 8*d.* and a 4*d.* duty. The 8*d.* duty was by various Acts of parliament especially appropriated to public improvements, and a considerable proportion of the improvements effected in late years have been defrayed out of it. The 8*d.* duty was included in the London Bridge Approaches Fund, and its net produce was paid over to Her Majesty's Office of Works for the liquidation of loans raised on the credit of it. The 4*d.* duty has always been claimed by the corporation of London as a part of the city's estate.

of London upon all coals, culm, and cinders brought to any place within the port of London, or within the cities of London and Westminster, and the borough of Southwark, or to any place within the distance of twenty miles from the General Post Office in the city of London, by any railway already constructed, or hereafter to be constructed, or by inland navigation, or by any other means of conveyance: And whereas it is apprehended that the duty of 8*d.*, part of the said duty of 1*s.*, will expire in the year 1861, and the said duty of 1*d.* in the month of July, 1862, unless provision be made by parliament for the continuance of such duties: And whereas it is expedient that the said duties of 4*s.* on wines, and 1*s.* 1*d.* on coals, culm, and cinders should be continued for a period of ten years: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

Continuation of wine duties.

I. The above-mentioned duty of 4*s.* a tun on wines shall continue and be levied in all respects in the same manner as the same is now leviable until the 5th day of July, 1872.

Continuance of coal duties.

II. All duties authorized by the Coal Duties Acts, or any of them, to be levied upon coal, culm, and cinders, shall continue and be levied in the same manner in which the same are now leviable until the 5th day of July, 1872, subject to the following qualification: That, notwithstanding anything contained in the said Acts, no duties shall be payable in respect of any coal, culm, or cinders, unless the same is contained in some ship or vessel arriving at her moorings within some part of the port of London (*c*) to the westward of Gravesend, within the limits of the metropolitan police district as defined by Act of Parliament (*d*), or be brought by railway, or by inland navigation, or by some other mode of conveyance within the said limits of the metropolitan police district, including the cities of London and Westminster.

Metropolitan police district substituted for the

III. After the passing of this Act the expression "London district," (*e*) used in the said recited Act of the fourteenth and fifteenth Victoria, chapter one hundred and forty-six, shall no

(*c*) The port of London extends from Staines, in the county of Middlesex, to Yantlete Creek, in the county of Kent.

(*d*) See definition of these limits in the 10 Geo. 4, c. 44, s. 4, and Schedule to the Act, and the 2 & 3 Vict. c. 47, s. 2.

(*e*) The London district was by 14 & 15 Vict. c. 146, s. 30, defined to mean so much of the counties of Middlesex, Surrey, Kent, Essex, Herts, Bucks, and Berks, as should be situate within the distance of twenty miles in a direct line from the General Post Office, and to include the cities of London and Westminster.

London district.

longer have the meaning assigned to it by that Act, but shall mean so much of the several counties of Middlesex, Surrey, Kent, Herts, Essex, Bucks, and Berks, as shall be situate within the metropolitan police district, and shall include the cities of London and Westminster.

Commencement of metropolitan police district to be marked in canals, railways, and roads.

IV. All the directions, powers, and provisions in the said recited Act of the fourteenth and fifteenth Victoria, chapter one hundred and forty-six, with respect to returns, certificates, and accounts, and to the erection of boxes, and stations, and boundary stones, or permanent marks on the point of any canal, inland navigation, or railway, or any turnpike or public road which shall be distant twenty miles from the General Post Office, and all other matters and things relating thereto, shall apply to returns, certificates, and accounts, and to the erection of boxes, and stations, and boundary stones, or permanent marks on the point where any canal, inland navigation, or railway, or any turnpike or public road, first enters or comes within the metropolitan police district.

Application of duties.

V. The duty of 1*d.* per ton on coals, culm, and cinders shall from and after the passing of this Act, and the said duty of 4*s.* per tun on wines, and the duty of 8*d.*, part of the said duty of 1*s.*, on coals, culm, and cinders, shall, from and after such time as all charges on the London Bridge Approaches Fund may be satisfied (*h*), be paid to an account to be opened in the name of the lords commissioners of Her Majesty's treasury at the Bank of England, to be intiuled "The Thames Embankment and Metropolis Improvement Fund," and such fund shall be applied to the improvement of the metropolis in such manner as may hereafter be determined by parliament (*i*).

Application of the duty of 4*d.* to the payment of

VI. That the net proceeds of the duty of 4*d.*, part of the said duty of 1*s.* on coal, culm, and cinders, shall, from the date of the passing of this Act, and during the continuance

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(*h*) The 13 & 14 Vict. c. 103, an Act to authorize further charges on the London Bridge Approaches Fund for the completion of certain improvements in the metropolis, enacted, that, after payment of all principal monies, &c., charged on the London Bridge Approaches Fund, the residue or surplus should, during the continuance thereof, be applied to the opening an improved line of communication between Coventry Street and Covent Garden, according to a plan to be thereafter approved by parliament. And by 20 & 21 Vict. sess. 2, 1857, it is provided that the improvement authorized by that Act, and called the Covent Garden Approach, shall be deemed the improved line of communication referred to in the said Act of the 13 & 14 Vict. c. 103.

(*i*) *See* Act for embanking the north side of the River Thames from Westminster Bridge to Blackfriars Bridge, and for making new streets in and near thereto, 25 & 26 Vict. c. 93, *post*.

thereof, be applied by the mayor, commonalty, and citizens of the city of London, in the first instance, in payment of the interest and in discharge of the principal of the following sums raised by the said mayor, commonalty, and citizens of the city of London, and charged by them upon the said duty; viz., the sums 300,000*l.*, 200,000*l.*, and 40,000*l.*, raised for making and improving Cannon Street, in the city of London, and for effecting other improvements in the said city as authorized by the Acts of parliament of the tenth and eleventh Victoria, chapter two hundred and eighty, thirteenth and fourteenth Victoria, chapter fifty-six, and the fifteenth and sixteenth Victoria, chapter seventy-two, and that an account of the receipt and application of the said duty be kept separate and distinct from the accounts of the said mayor, commonalty, and citizens, and that an abstract of the said account be annually laid by the chamberlain of the said city before both houses of parliament, and that after discharging the said sums and interest, the said duty of 4*d.* shall be applied by the said corporation of London towards or in aid of such a public improvement or improvements in or adjacent to the city of London as parliament shall hereafter sanction.

The interest and principal of sums charged thereupon for improvements.

VII. There shall be allowed with respect to coals brought within the port of London, or within the metropolitan police district, and afterwards conveyed to any place beyond the port of London or the metropolitan police district, a drawback of the same amount and upon the same conditions as is allowed by the said recited Act of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter one hundred and forty-six, and the coal duties, London, &c., Drawback Act, 1857, or one of such Acts, in respect of the coals therein mentioned, and the lord mayor, aldermen, and commons of the city of London in common council assembled shall have power, with the consent of the board of trade, to alter, vary, or dispense with any of the forms in relation to the drawback upon coals contained in the said recited Act of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter one hundred and forty-six.

Drawback upon coals to continue to be allowed.

VIII. The monies from time to time paid to the account created by this Act shall, when received, be laid out and invested in the purchase of stock in some of the public stocks or funds, or upon government or real securities, at interest, in the name of the said commissioners, and the said commissioners shall from time to time lay out or invest the yearly dividends or interest of the stocks, funds, and securities so to be purchased in their names on the account aforesaid, in like manner, for the purpose of accumulation in the meantime, until the said fund is appropriated by parliament to the execution of improvements in the metropolis.

Duty to be laid out and form an accumulating fund for improvements till appropriated by parliament.

Consolidation of improvement funds.

IX. All monies, stocks, funds, and securities standing to the account of the Metropolis Improvement Fund Account created by the Act of the session of the eighth and ninth years of the reign of Her present Majesty Queen Victoria, chapter one hundred and one, shall, from and after the passing of this Act, and all monies, stocks, funds, and securities standing to the account of the London Bridge Approaches Fund shall, from and after such time as all charges on the said funds may be satisfied, be carried to and form part of the Thames Embankment and Metropolis Improvement Fund created by this Act, and the said London Bridge Approaches Fund shall thereupon cease and determine.

Continuance of above-mentioned Acts, except as altered.

X. Subject to the provisions of this Act, the said Act of the session of the fifth and sixth years of the reign of King William and Queen Mary, chapter ten, so far as relates to the levying of the said Wine Duties and the said Coal Duties Acts, and all matters therein contained, shall be continued until the 5th day of July, 1872; and all the provisions contained in the said Act of the session of the first and second years of King William the Fourth, chapter seventy-six, to take effect at the end of seven years, therein mentioned, shall take effect as if the 5th day of July, 1872, had been inserted in the said last-mentioned Act instead of the said term of seven years.

Short title.

XI. This Act may be cited for all purposes as "The London Coal and Wine Duties Continuance Act, 1861."

25 & 26 VICT. CAP. 93.

AN ACT

FOR EMBANKING THE NORTH SIDE OF THE RIVER THAMES FROM WESTMINSTER BRIDGE TO BLACKFRIARS BRIDGE, AND FOR MAKING NEW STREETS IN AND NEAR THERETO.

7TH AUGUST, 1862.

WHEREAS by "The London Coal and Wine Duties Continuance Act, 1861," (*k*) after reciting that by an Act passed in the session holden in the fifth and sixth years of the reign of King William and Queen Mary, chapter ten, intituled "An Act for the Relief of the Orphans and other Creditors of the City of London, it was enacted (amongst other things) that, towards raising a fund as therein mentioned, a duty of 4*s.* per tun should be imposed upon all sorts of wines whatsoever which from and after the 4th day of June, 1694, should be imported into the port of the city of London, or the members thereof, by way of merchandize, over and above the then present duties charged or chargeable thereupon, and so proportionably for a greater or lesser quantity, which said duty should from time to time for ever be paid by the importer thereof unto the mayor, commonalty, and citizens of the city of London (hereinafter called "the corporation of London"); and reciting, that by the Acts thereinafter mentioned, and thereinafter referred to as the Coal Duties Acts, or some or one of such Acts, two several duties of 1*d.* and 1*s.* per ton were authorized to be levied by the corporation of London upon all coals, culm, and cinders brought to any place within the port of London, or within the cities of London and Westminster and the borough of Southwark, or to any place within the distance of twenty miles from the General Post Office in the city of London, by any railway already constructed, or thereafter to be constructed, or by inland navigation, or by any other means of conveyance, it was enacted (amongst other things), that the above-mentioned duty of 4*s.* a tun on wines should continue and be levied in all respects in the same manner as the same was then leviable until the 5th day of July, 1872; and that all duties authorized by the said Coal Duties Acts or any of them to be

24 & 25 Vict. c. 42.

(*k*) See the Act, p. 345, *ante*.

levied upon coal, culm, and cinders should continue and be levied in the same manner in which the same were then leviable until the 5th day of July, 1872, subject to the following qualification, that, notwithstanding anything contained in the said Acts, no duties should be payable in respect of any coal, culm, or cinders, unless the same was contained in some ship or vessel arriving at her moorings within some part of the port of London to the westward of Gravesend, within the limits of the metropolitan police district, as defined by Act of parliament, or be brought by railway or by inland navigation, or by some other mode of conveyance within the said limits of the metropolitan police district, including the cities of London and Westminster; and it was further enacted, that the duty of 1*d.* per ton on coals, culm, and cinders should, from and after the passing of the Act now in recital, and the said duty of 4*s.* per tun on wines, and the duty of 8*d.*, part of the said duty of 1*s.* on coals, culm, and cinders, should, from and after such time as all charges on the London Bridge Approaches Fund might be satisfied, be paid to an account to be opened in the name of the lords commissioners of Her Majesty's treasury at the Bank of England, to be intituled "The Thames Embankment and Metropolis Improvement Fund," and such fund should be applied to the improvement of the metropolis in such manner as might thereafter be determined by parliament; and it was further enacted, that the monies from time to time paid to the account created by the Act now in recital should, when received, be laid out and invested in the purchase of stock in some of the public stocks or funds or upon government or real securities, at interest, in the name of the said commissioners, and that the said commissioners should, from time to time, lay out or invest the yearly dividends or interest of the stocks, funds, and securities so to be purchased in their names on the account aforesaid in like manner for the purpose of accumulation in the meantime until the said fund was appropriated by parliament to the execution of improvements in the metropolis; and it was further enacted, that all monies, stocks, funds, and securities standing to the account of the Metropolis Improvement Fund account, created by the Act of the session of the eighth and ninth years of the reign of Her Majesty, chapter one hundred and one, should, from and after the passing of the Act now in recital, and all monies, stocks, funds, and securities standing to the account of the London Bridge Approaches Fund should, from and after such time as all charges on the said funds might be satisfied, be carried to and form part of the Thames Embankment and Metropolis Improvement Fund created by the Act now in recital, and the said London Bridge Approaches Fund should thereupon cease and determine: and whereas all monies, stocks, funds, and securities standing to the account of the London Bridge Approaches Fund have, with the consent of the corporation of the

city of London, been carried over to the said Thames Embankment and Metropolis Improvement Fund upon the understanding that the charges on the said London Bridge approaches should be duly discharged out of the said Thames Embankment and Metropolis Improvement Fund: and whereas it is expedient to set apart for meeting the aforesaid charges such sum as the commissioners of Her Majesty's treasury may think sufficient: and whereas on the 23rd day of February, in the year 1861, Her Majesty issued a commission, addressed to the Right Honourable the Lord Mayor of the City of London, Major General Sir Joshua Jebb, K.C.B., John Thwaites, Esq., Chairman of the Metropolitan Board of Works, Captain Douglas Galton, of the Royal Engineers, Edward Burstall, Esq., Commander in Her Majesty's Navy, Henry Arthur Hunt, Esq., Surveyor of Her Majesty's Works and Public Buildings, and John Robinson M'Clean, Esq. (to which commission Henry Kingscote was secretary), to examine into plans for embanking the River Thames within the metropolis, so as to provide with the greatest efficiency and economy for the relief of the most crowded streets by the establishment of a new and spacious thoroughfare for the improvement of the navigation of the river, and which would afford an opportunity of making the low-level sewer without disturbing the Strand or Fleet Street, and also to report upon the cost and means of carrying the same into execution: and whereas the commissioners acting under the recited commission, by their report to Her Majesty, dated the 22nd day of July, 1861 (and which has been presented to both houses of parliament by command of Her Majesty), have recommended that the several improvements and works hereinafter specified should be executed and effected: and whereas by an Act of the session holden in the twentieth and twenty-first years of Her Majesty, chapter one hundred and forty-seven, all the estate, right, title, and interest of the corporation of London in the bed and soil and shores of the River Thames from Staines to Yantlete, and all the estate, right, title, and interest to which Her Majesty was on the 23rd day of February, 1857, entitled in right of her crown of, in, and to the bed and soil and shores of the said river, within the flux and reflux of the tides, bounded eastward as in the Act now in recital is mentioned, and of, in, and to all encroachments, embankments, and inclosures therefrom or thereupon, except such parts thereof as in the same Act are specified, were vested in the conservators of the River Thames, a corporation by the same Act constituted: and whereas by an Act of the session holden in the twenty-first and twenty-second years of Her Majesty, chapter one hundred and four, it was enacted, that the metropolitan board of works should cause to be commenced, as soon as might be after the passing thereof, the necessary sewers and works for the improvement of the main drainage of the metropolis, and for preventing the sewage of the metropolis

from passing into the River Thames within the metropolis, and that for the purposes of the Act now in recital the said board might construct any work through, along, over, or under the bed and soil and banks and shores of the River Thames, making compensation (*a*) as therein mentioned: and whereas it is expedient that the metropolitan board of works should be empowered to form the embankment and new streets, and to execute, effect, and maintain the other improvements and works hereinafter specified; and for the purpose of providing a fund to enable such board to effect the objects aforesaid, it is expedient that the commissioners of Her Majesty's treasury should be authorized, out of or by charge upon the Thames Embankment and Metropolis Improvement Fund aforesaid, to raise and provide such sum or sums as may from time to time be necessary for those purposes; and that every such sum, when so raised or provided, should be paid over to the said board for the purposes of this Act: and whereas the objects of this Act cannot be attained without the authority of parliament: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

8 & 9 Vict. c. 18 (except ss. 34 and 92), and 23 & 24 Vict. c. 106, incorporated with this Act.

I. "The Lands Clauses Consolidation Act, 1845," (except the sections thirty-four (*b*), and ninety-two (*c*)), and "The Lands Clauses Consolidation Acts Amendment Act, 1860" (*d*), shall, so far as the provisions of such Acts respectively are not expressly varied by or excepted from this Act (*e*), be incorporated with and form part of this Act; and the metropolitan board of works shall be taken to be the persons in such first-mentioned Act intended by the words "promoters of the undertaking."

Short title.

II. This Act may for all purposes be cited as "The Thames Embankment Act, 1862."

(*a*) See sect. 2 of that Act as to compensation, p. 223, *ante*.

(*b*) Providing that the costs of arbitration shall be borne by the promoters of the undertaking, unless the arbitrators award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrator shall be borne by the parties in equal proportions.

(*c*) Enacting that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house, or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

(*d*) See the Acts, *post*. See limitation of time for exercise of compulsory power, s. 13, *post*.

(*e*) See sects. 75, 76, and 81, *post*.

Interpretation of terms.

III. The following words and expressions in this Act have for the purposes of this Act the following meanings, unless excluded by the subject or context; (to wit,)

"The Board" means the metropolitan board of works constituted by and acting under the statute, eighteenth and nineteenth Victoria, chapter one hundred and twenty, for the better Local Management of the Metropolis:

"The treasury" means the commissioners of Her Majesty's treasury:

"The admiralty" means the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral:

"The conservators" means the conservators of the river Thames:

"The hereinbefore recited Act" means "The London Coal and Wine Duties Continuance Act, 1861:"

"The Thames Embankment and Metropolis Improvement Fund" shall mean and include the stocks, funds, and securities from time to time constituting the fund so intituled in the hereinbefore recited Act, and thereby so made applicable to improvements in the metropolis as aforesaid, and the duties, income, and monies in and by the same Act made applicable to the formation of such fund:

The word "justice" shall, in relation to any lands or to the purchase or taking by the board of any lands situated within the city of London or the liberties thereof, mean the lord mayor or any alderman or the recorder of the city of London, and shall, in relation to any lands or to the purchase or taking by the board of any lands situated not within the city of London or the liberties thereof, but within the county of Middlesex, mean a justice of the peace acting in or for the county of Middlesex:

The word "sheriff" in "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," shall, with respect to this Act, so far as the same affects the works and improvements authorized by this Act which shall be within the city and liberty of Westminster, mean the high bailiff of Westminster in all cases where the high bailiff discharges the duties and offices usually discharged by the sheriff:

The word "street" shall include any square, street, highway, road, lane, footway, thoroughfare, or public place, court, alley, or passage, whether a thoroughfare or not, and a part of any such square, street, highway, road, lane, footway, thoroughfare, or public place, court, alley, or passage.

Same meaning to words in incorporated Act as in this Act.

IV. The several words and expressions to which by the said "Lands Clauses Consolidation Act, 1845," meanings are assigned, have in this Act the same respective meanings, unless excluded by the subject or context: Provided always, that for the purposes of this Act the expression "the superior courts" therein includes all courts of competent jurisdiction, and the word "lands" therein also includes easements, interests, rights, and privileges in, over, or affecting lands.

Plans deposited at the offices of the clerks of the peace to remain there and be open to inspection.

V. Whereas plans and sections of the works and improvements by this Act authorized describing the proposed situation of the same and the lines and levels thereof and the lands intended to be taken for the purposes thereof respectively, and also books of reference to the said plans containing the names of the owners and lessees or reputed owners and lessees and occupiers of the lands which may be required for the purposes of this Act, have been deposited at the offices of the clerk of the peace for the city of London, the clerk of the peace for the county of Middlesex, and the clerk of the peace for the city and liberty of Westminster respectively: such plans and sections and books of reference shall remain in the said offices, to the end that all persons may at all reasonable times have liberty to inspect and peruse the same at their will and pleasure, paying the sum of one shilling for every such inspection.

Power to make works according to deposited plans.

VI. Subject to the provisions and for the purposes of this Act, it shall be lawful for the board (*f*) to make the improvements and works by this Act authorized in the situations and lines and according to the levels, and within the limits of deviation (*g*) (qualified as herein after mentioned), and upon the lands delineated on the said plans and sections and described or mentioned in the said books of reference, and otherwise to carry this Act into operation: Provided always, that nothing herein contained shall authorize or empower the construction of any part of that portion of the embankment or viaduct de-

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(*f*) Though the select committee of the House of Commons appointed in 1860 to consider the subject of the embankment of the Thames, recommended that the construction of the embankment should be confided to the metropolitan board of works, the commission of the following year appointed to examine into plans for embanking the river Thames within the metropolis, made a recommendation that the conduct and management of the undertaking should be entrusted to a special commission to be appointed by the Queen. See the report of the commissioners, and protest by Mr. Thwaites, chairman of the metropolitan board of works and one of the commissioners, presented to both houses of parliament. The recommendation of the commissioners was rejected by parliament, and the execution of the work ultimately entrusted to the metropolitan board.

(*g*) See sect. 12, *post*.

lineated on the said plans which lies between Blackfriars Bridge and that point of the embankment or viaduct where it turns off towards Chatham Place.

VII. It shall be lawful for the board from time to time to appoint a committee to manage and transact all or any of the matters or purposes which the board are hereby empowered to do, execute, or perform, which committee shall have so much or so many of the powers, authorities, and discretions by this Act given to and reposed in the board as the board shall think fit or proper to delegate to such committee. Board to appoint committee to carry the Act into execution (h).

VIII. The improvements and works by this Act authorized comprise the following; (to wit,) Works authorized (i).

1. The making and maintaining an embankment and viaduct on the left bank of the river Thames, with all necessary and convenient walls, piers, arches, culverts, drains, quays, wharves, barge beds, basins, landing places, stairs, waterways, approaches, and other conveniences and works, such embankment to commence at the northern side of the Middlesex end of Westminster Bridge, and to terminate at or near the eastern boundary of the Inner Temple, and such viaduct to commence at the eastern boundary of the Inner

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(h) A similar provision is contained in the Covent Garden Approach, and Southwark and Westminster Communication Act, 1857, 20 & 21 Vict. Sess. 2, 1857.

(i) These works comprise a solid embankment chiefly upon the bed or shore of the river Thames upon the northern bank of that river between Westminster Bridge and the east side of the Temple Gardens, and a viaduct from the last-named point to Blackfriars Bridge, with a roadway upon the embankment and viaduct throughout the entire length; such roadway to be 100 feet in width from the Clock Tower of the Houses of Parliament to the east end of the Temple Gardens, and 70 feet in width through the remaining part of its length. The select committee of the House of Commons upon the Thames Embankment Bill on the 28th May, 1862, recommended that the roadway on the river embankment should terminate at or near to Whitehall Stairs, and be diverted towards Parliament Street, in a diagonal line from Scotland Yard through Privy Gardens to the end. After considerable discussion this recommendation was ultimately rejected, and the bill passed into a law in its present shape. It appears by a return to an order of the House of Commons, dated 7th April, 1862, that the estimated expenditure on the embankment, including compensation and all other expenses, is 1,500,000*l.*, and of the approaches 80,000*l.*, and that the length of the proposed embankment between Westminster Bridge and Blackfriars Bridge will be 2,235 yards. By the same return it appears that the approximate estimate for the construction of the low-level sewer within this embankment (north of the Thames), including the branch connections, is 30,000*l.* This is exclusive of the cost of the preparation of the foundations, coffer dams, and incidental works, which will be debited to the embankment. The amount applicable to the low-level sewer will be defrayed out of the main drainage rates under 21 & 22 Vict. c. 104.

Temple and to terminate near to the western side of the northern end of Blackfriars Bridge; the said embankment and viaduct respectively to be constructed in whole or in the greater part upon the bed or foreshore of the river Thames, and the site of which embankment and viaduct will be within the parishes, liberties, extra-parochial and other places following, or some of them; (that is to say,) St. Margaret, Westminster, St. Martin in the Fields, St. Clement Dane, St. Mary-le-Strand, St. John the Baptist, and the Savoy or precinct of the Savoy, all in the county of Middlesex, and the Middle Temple and the Inner Temple, the precinct of Whitefriars, St. Bridget otherwise St. Bride, the precinct of Bridewell, and the parish or precinct of St. Ann, Blackfriars, all in the city of London or county of Middlesex:

2. The making upon the said embankment and viaduct a public roadway one hundred feet wide up to the eastern boundary of the Inner Temple, and not less than seventy feet wide, thence to Chatham Place, with all necessary approaches to the said roadway:

3. The making of an approach road of an uniform width of not less than forty feet, and on a gradient not steeper in any part thereof than one in thirty, leading from and out of such embankment roadway, and communicating by means of approaches with each of the streets following; namely, Surrey Street, Norfolk Street, and Arundel Street; and which last-mentioned approach road and approaches will be in the parish of St. Clement Dane in the city of Westminster, each of which approaches shall be formed on a gradient not steeper in any part thereof than one in thirty, and of a width not less than the width of the street with which the same shall so communicate as aforesaid:

4. The making a new street which shall commence from and out of the said embankment and roadway at or near the east side of the Middlesex end of Hungerford Bridge in the parish of St. Martin in the Fields, and shall pass on, over, and through divers streets, wharves, lands, and places in the parishes of St. Martin in the Fields, St. Clement Dane, and the precinct of the Savoy, and shall terminate in Wellington Street, Waterloo Bridge, in the precinct of the Savoy, opposite to the northern wing of the western front of Somerset House, with all necessary approaches to such new street; and also several short streets or communications, each to commence from and out of such last-mentioned new street, and respectively to communicate with and terminate in Villiers Street and

Buckingham Street in the parish of St. Martin in the Fields, and Cecil Street in the Parishes of St. Martin in the Fields and St. Clement Dane, or one of them:

5. The making a new street which shall commence by a junction with the intended new street fourthly herein described at or near to George Street in the Adelphi, and shall terminate in and by a junction with Whitehall Place at the east end thereof, all in the parish of St. Martin in the Fields:
6. The making a new street which shall commence from and out of the said embankment and roadway at or near a place called Whitehall Stairs, and shall pass thence through Whitehall Yard, and shall terminate in the street known as Whitehall, opposite to the Horse Guards, all in the parishes of St. Margaret, Westminster, and St. Martin in the Fields:
7. The reclaiming and inclosing all or so much of the bed or foreshore of the river Thames as shall lie between the present left bank of such river and the said intended embankment.

Certain land not to be taken without consent.

IX. Nothing herein contained shall authorize the board to enter upon, take, or use the lands numbered on the deposited plans 45, 45[a], 45[b], and 45[c], or any part thereof respectively, in the parish of St. Margaret's, Westminster, without the consent of the owners, lessees, and occupiers for the time being of the same respectively.

Provision for further works.

X. The provisions of this Act, and the powers and appropriation (*k*) herein contained with reference to the Thames Embankment and Metropolis Improvement Fund, shall apply to all such further works for extending the embankment of the Thames and relieving the thoroughfares of the metropolis in connexion with the present and any future embankment as may hereafter be authorized by parliament, as if such works were specifically authorized by the present Act (*l*).

Power to set out footways, &c.

XI. Save as herein otherwise expressly provided, it shall be lawful for the board to cause such part of the said roadway and of the said ground so to be inclosed as aforesaid, and of the said streets respectively, to be laid out for carriageways, and such part thereof for foot passengers, as they shall think proper.

(*k*) See sect. 45, *post*.

(*l*) The Thames Embankment Commission, 1861, recommended the formation of a new street from the west end of Earl Street and Cannon Street to the Mansion House, and other improvements.

Power to deviate.

XII. In carrying the said works and improvements into execution it shall be lawful for the board, save as herein otherwise expressly provided, to deviate to any extent not exceeding five feet from the levels defined in the said sections, and the board shall not deviate beyond the limits of deviation delineated in the said plans without consent of the person through whose lands such deviation shall be made, nor carry the line of the embankment wall, as shown on the said plans, further into the stream of the said river than three feet, without the consent of the conservators, signified in writing under the hand of their secretary.

Powers for compulsory purchases limited.

XIII. The powers of the board for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of five years from the passing of this Act.

Power to inclose and fill up bed and shore of river, to remove stairs, &c.

XIV. In and for the purpose of effecting the embankment, viaduct, or other works, and the reclaiming (*m*) of land hereby respectively authorized, it shall be lawful for the board to inclose and fill up the bed and shore of the river Thames as shown in the said deposited plans, and also such further parts thereof as shall be required by the board for constructing any barge beds, recesses, stairs, piers, landing-places, hards, or other works in pursuance of the powers in that behalf herein contained; and also to remove, destroy, alter, divert, stop up, or inclose such streets, streams, drains, sewers, watercourses, void ground, wharves, jetties, quays, barge beds, stairs, piers, landing-places, hards, mooring posts or rings, posts, piles, and other materials and things, or such part or parts thereof respectively as shall in the judgment of the board be necessary to be removed, destroyed, altered, diverted, stopped up, or inclosed for the purposes of this Act, making compensation (*n*) to all persons having any interest in any wharves, jetties, or other property taken for or injuriously affected by such works or other the exercise of the powers of this Act.

Power to purchase lands and extinguish rights

XV. Save as herein otherwise expressly provided (*o*), it shall be lawful for the board to purchase any lands (*p*), and to purchase and extinguish or procure the extinguishment of

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(*m*) See sects. 26, 27.

(*n*) To be determined in manner provided by the Lands Clauses Act, as qualified by this Act.

(*o*) See sect. 9, *ante*, and sects. 56, 60, 80, and 82, *post*.

(*p*) By sect. 3 of Lands Clauses Consolidation Act, 8 Vict. c. 18, the word "lands" extends to messuages, lands, tenements, and hereditaments of any tenure, and by sect. 4 of this Act to easements, interests, rights, and privileges in, over, or affecting lands.

any rights, interests, easements, or privileges which any person may have, possess, or claim in, to, over, or in respect of the bank or shore or bed of the river Thames lying within the limits of deviation defined on the said deposited plans. and claims to shore, &c.

XVI. For the purpose of effecting or forming the said embankment or any other the works by this Act authorized, it shall be lawful for the conservators, and they are hereby required, when and as often as and within a reasonable time after they shall have been required by the board so to do, to dig, raise, and take up from the bed of the said river, in any places they may think fit, whether above or below London Bridge, gravel, sand, soil, or other materials, and to lay and deposit the gravel, sand, and soil and other materials so raised in such places as the board shall from time to time designate and point out by notice in writing to be addressed to the conservators, they the board paying to the conservators (and which the board are hereby authorized to do) such sums of money as the conservators shall have actually incurred and expended in and about such digging, raising, and taking up, and such laying and depositing as aforesaid: Provided always, that in case the conservators shall refuse or neglect, within ten days after they shall have been required by the board so to do, to proceed to dig, raise, and take up from the bed of the said river such gravel, sand, soil, or other materials for the purposes aforesaid, it shall be lawful for the board to do the several acts hereby required to be done by the conservators for the purposes aforesaid without being in anywise required to obtain the consent of the conservators: Provided always, that the dredging be done at such places within the limits of the metropolis, as defined by the Metropolis Local Management Act (*q*), and to such depths as the conservators shall within ten days after requisition define, and in default of such definition then at any places and at such depths as the board may think fit, and that all gravel, sand, soil, or other materials which shall be raised as aforesaid shall be wholly removed and taken away from the said river without screening or returning any part thereof into the said river after the same shall have been so raised; Provided also, and the conservators are hereby required, at the expense of the board as aforesaid, to level all holes and pits that shall be dug or caused by any such excavation or digging as aforesaid, and in all places where they shall deepen the bed of the said river to deepen the same uniformly: Provided always, that, notwithstanding anything contained in the sixth and seventh Victoria, chapter fifty-seven (*r*), the conservators shall be entitled to be paid as afore- Soil may be raised from the river to form the embankment by the conservators.

(*q*) See definition of limits, 18 & 19 Vict. c. 120, note (*b*) p. 1, *ante*.

(*r*) 6 & 7 Vict. c. 57, for the regulation of lastage and ballastage

said for the cost of materials so raised as well below as above London Bridge.

Board empowered to take places for depositing materials.

XVII. It shall be lawful for the board to take on lease or to agree for the use and occupation of proper places on any part of the north bank of the said river between Westminster Bridge and Blackfriars Bridge, or within five hundred yards of the site of the said intended embankment, for the purpose of depositing and working stone, iron, timber, and other materials for constructing and completing the said embankment and roadway.

Works, &c., to be approved of by the admiralty (*c*).

XVIII. No works, other than those necessary for the completion of the works expressly authorized by this Act, upon the bed or shore of the river Thames below high-water mark which may interfere with the navigation of that river shall at any time be commenced or executed under the provisions of this Act without the same having been previously approved of by the admiralty, such approval to be from time to time specified in writing under the hand of the secretary to the admiralty.

Certain works to be first approved by the conservators.

XIX. The stairs, hards, quays, wharves, barge beds, recesses, approaches, piers, landing-places, and temporary works by this Act authorized shall be made according to plans and elevations to be first approved by and deposited at the office of the conservators.

Lights to be exhibited at night during construction of embankment.

XX. During the construction of the said embankment and the works connected therewith the board shall cause to be hung out or exhibited every night from sunset to sunrise good and sufficient lights, to be kept burning by and at the expense of the board, for the navigation and safe guidance of vessels, and which lights shall be from time to time altered by the board in such manner, and be of such description and number, and be so used and placed, as the conservators shall by writing under the hand of their secretary approve of.

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in the river Thames, s. 5, vested in the corporation of the Trinity House. The sole right of digging gravel, &c., under the 6th section, prohibited the taking of ballast, &c., from the bed of the river above London-bridge without the licence of the lord mayor as conservator of the Thames.

(*c*) The 21 & 22 Vict. c. 104, s. 27, relating to the main drainage, prohibited the execution of any work whatever on the bed and shores of the river which might interfere with the navigation without the previous approval of the admiralty, but that approval is not required for the construction of any work expressly authorized by this Act, and it only becomes necessary when other or additional works are going to be executed.

XXI. Whenever the board shall shut up, remove, or take away, or in any manner obstruct the free use and enjoyment of any existing piers, public stairs, or landing-place now marked by the watermen's company, they shall cause some pier, public stairs, or landing-place to be erected or provided, to the satisfaction of the conservators, in the stead of the pier, stairs, or landing-place so shut up, removed, or taken away, or the free use and enjoyment of which may be obstructed; and every such substituted pier shall, so soon as the same shall be completed, be and hereby is vested in the conservators, and subject in their hands to all the powers and provisions applicable thereto of "The Thames Conservancy Act, 1857." Piers and stairs to be provided in lieu of those taken away.

XXII. From and after the completion of the embankment and viaduct by this Act authorized the board shall, out of the rates (*d*) raised for defraying the expenses of the board under the Act eighteen and nineteen Victoria, chapter one hundred and twenty, keep and maintain the same respectively and every part thereof in proper repair; and if the embankment or viaduct or any portion thereof or any of the works connected therewith be out of repair or insecure, so as to be dangerous to any person passing along the river Thames, or to any vessel either moored alongside of or passing by the same respectively, or be in any manner injurious or likely to be injurious to the river Thames or to the free navigation thereof, the conservators may, by notice in writing to the board, require them to repair the embankment or viaduct, or the portion thereof or the works connected therewith so out of repair or insecure as aforesaid, to the reasonable satisfaction in all respects of the surveyor from time to time of the conservators, within a time to be limited in such notice; and in case the board refuse or fail to repair the embankment or viaduct, or such portion thereof, to the reasonable satisfaction in all respects of such surveyor, within the time to be limited as aforesaid, then and in every such case the conservators may repair the same respectively, and may recover the expenses incurred thereby from the board; provided that all the parts of the metropolis shall be deemed to be equally benefited (*e*) by all sums ex- Embankment to be kept in repair.

(*d*) The board assess under s. 5 of 25 & 26 Vict. c. 102, *gross* sums, and the *rates* are made by overseers or vestries under s. 161 of 18 & 19 Vict. c. 120, who pay in gross sums to the board.

(*e*) This enactment now seems superfluous, as under the 25 & 26 Vict. c. 102, s. 5, the board assess the parishes and parts subject to their jurisdiction according to the value only. At the time of the passing of the Act for the purification of the Thames and main drainage, 21 & 22 Vict. c. 104, it required the special provision contained in the 12th section of that Act to ensure a rating according to rental only, as the ordinary expenses of the board were then assessed under s. 170 of the 18 & 19 Vict. c. 120, which required that in works of drainage regard should be had to the benefit derived from the works.

pended by the board for such maintenance and repair as aforesaid.

Mode of ascertaining value of property to be taken under Act.

XXIII. If the owner, lessee, or occupier of any lands authorized to be taken by virtue of this Act shall not be inclined to sell or part with the whole thereof, or of his interest in the whole thereof, and it shall not be found necessary to take the whole for the purposes of this Act, and the said parties cannot agree as to the sum of money to be paid for the part (*f*) which the board or any person authorized by them shall not think it necessary to purchase, then and in such case the jury which shall be summoned to value the premises shall assess, and every arbitrator shall ascertain the value of the whole premises, according to the condition in which they were at the time the notice requiring to take the same was served, and also the value of that part of the premises which will remain after the board or the persons authorized by them have taken away so much as they shall think necessary for the purposes of this Act; and the jury or arbitrator having made these two valuations, the difference between them shall be the price to be paid by the board for that part for which they shall have occasion.

Premises may be taken notwithstanding errors in book of reference.

XXIV. It shall be lawful for the board to purchase, take, and use for the purposes of this Act, any of the lands (*g*) described in the said plans deposited at the office of the clerk of the peace for the city of London, and of the clerk of the peace for the county of Middlesex, and of the clerk of the peace for the city and liberty of Westminster, as intended to be taken for the purposes of this Act, although the same lands, or the names of the owners or occupiers thereof may happen to be erroneously stated in or omitted from the said book of reference, in case it shall appear to any two aldermen of the city of London, or, as the case may require, to any two justices acting in or for the county of Middlesex, and be certified under their hands, that such error or omission proceeded from mistake or erroneous information: Provided always, that previously to submitting the case to two aldermen or to two justices as aforesaid, ten clear days' notice shall be given to the owners whose lands shall be affected by such erroneous statement or omission in the said book of reference; provided also, that nothing in this Act contained shall authorize the board to purchase, take, or use any parish church without the consent of the bishop of the diocese.

(*f*) This enactment as to taking only a part of a property, is substituted for the 92nd section of the Lands Clauses Act, 8 Vict. c. 18, which by s. 1, *ante*, is expressly excluded from those provisions of the Lands Clauses Act which are incorporated with this Act.

(*g*) As to definition of lands, see note (*p*) to sect. 15, *ante*.

Ground laid into the streets, &c. to be used by the public.

XXV. When the said roadway and new streets, and the approaches to the same respectively, shall be made and paved in pursuance of this Act, all the ground and lands which shall be laid open into the said roadway, or any of such new streets, or the approaches of the same respectively, shall form part of such roadway or new street, as the case may be, and shall, except as hereby otherwise expressly provided, be used by the public accordingly; and the same roadway, new streets, and approaches, and the sole power, authority, and duty of paving, repairing, cleansing, lighting, and watching thereof respectively, and of rating the lands and hereditaments situate and being within the same, shall be under the care, management, control, and jurisdiction of the same vestries, board, district boards, commissioners, or persons as the other streets in the wards, districts, parishes, or places in which the same respectively shall be situate.

Reclaimed land to be dedicated to the use of the public

XXVI. All the land to be reclaimed from the river Thames on the south of the streets fourthly and fifthly hereinbefore described, and not required for streets or roads, nor otherwise specifically appropriated (*h*) by the provisions of this Act, and lying between an imaginary line drawn from the eastern boundary of the houses on the east side of Cecil Street to the embankment roadway on the east, and the crown lands on the west, and the embankment roadway on the south, together with the lands to be reclaimed between the southern side of the approach road, shown on the plan marked (C.) hereinafter referred to, leading towards Norfolk Street, Surrey Street, and Arundel Street, shall for ever hereafter be vested in and maintained by the board for the use of the public as places of recreation or ornamental ground, and the expenses incident to such maintenance, shall be deemed to be expenses of the board in the execution of the Act eighteenth and nineteenth Victoria, chapter one hundred and twenty, and all the parts of the metropolis shall be deemed to be equally benefited (*i*) by all sums so expended by the board.

Power to appropriate land or easements in respect of loss of river frontage.

XXVII. Subject to the provisions herein contained, it shall be lawful for the board, by agreement, to appropriate by way of grant or demise, either in perpetuity or for any term of years or other period, and for or subject to a nominal or any other consideration or rent, any reclaimed land, or any absolute or partial or qualified licence or right of user or enjoyment, right of way, right of frontage, or other right or easement of, out of, over, upon, in connexion with, or in relation to any reclaimed land, or any wharf, basin, barge, bed, recess, slip, hard, stairs, waterway, and landing-place to be constructed or provided by the board under the powers of this

(*h*) See sect. 27 and 29. (*i*) See note (*e*) to sect. 22, *ante*.

Act, and the approaches, conveniences, and works connected therewith, to any owner of lands now situated on the present left bank and river frontage of the river Thames, in front whereof the said intended embankment and roadway shall pass as aforesaid, in consideration of, and in lieu in whole or in part of the compensation (*k*) which such owner or person may be entitled to claim for the damage, if any, to be sustained by him by loss of river frontage or otherwise, by reason of such embankment and roadway, or other the exercise of any of the powers of this Act.

No house to be erected in front of the gardens of the Inner and Middle Temple.

XXVIII. No house or building shall be erected upon any part of the lands to be acquired or reclaimed as aforesaid situated between the river Thames and the gardens of the societies of the Inner and Middle Temple respectively, other than any such porters or gardeners' lodges, alcoves, or other buildings of a like nature, of only one floor each, as are from time to time, whether before or after the passing of this Act, approved by the first commissioner of Her Majesty's works and public buildings, by writing under his hand.

As to the roadway, &c. connected with the Inner and Middle Temples.

XXIX. Notwithstanding anything in this Act contained, the public roadway hereinbefore mentioned shall, so far as the same passes southward of the gardens of the societies of the Inner and Middle Temples respectively, be constructed on an embankment, and all the land reclaimed and enclosed from the river Thames lying in front of the present southern boundary of the Inner and the Middle Temples, except so much as is occupied by the embankment and road thereon, shall for ever hereafter be the exclusive property, as to such land southward of the Inner Temple, of and be vested in the trustees for the society of the Inner Temple, and as to the lands southward of the Middle Temple, of and be vested in the trustees for the society of the Middle Temple, for an estate in fee simple absolute in possession, to and upon the like uses and trusts as the uses and trusts to and upon which the lands adjoining thereto of the societies respectively are from time to time held; and such lands, but not the embankment or road thereon, shall for all parochial purposes be within and part of the places called the Inner Temple and the Middle Temple respectively; and in order that so far as can be, the two societies respectively and their respective property and rights shall be protected against being prejudicially affected by the execution of this Act, the board from time to time, may and shall take all such precautions, and make, execute, and do all such matters and things, in, upon, in connection with, and near to the Temple land, and fulfil all such stipulations, as are before the

(*k*) This is not a power to sell or let absolutely, but only to parties entitled to compensation.

passing of this Act specified, under the hand of the first commissioner of Her Majesty's works and public buildings; and the said societies of the Inner Temple and Middle Temple shall not claim any damage or compensation in respect of the execution of the powers of this Act.

Board to erect landing stairs for the use of the Temples.

XXX. The board may and shall make for the two societies a landing-place, with proper and sufficient works and conveniences connected therewith, in substitution for their present landing-place at the end of Middle Temple Lane, and the same shall be used by the Inner Temple and the Middle Temple, and shall be held, enjoyed, and regulated by the two societies as their private landing-place accordingly.

Saving rights of the Temples.

XXXI. Except only as is by this Act expressly enacted, this Act, or anything therein contained, shall not take away, lessen, prejudice, alter, or affect any of the estates, rights, interests, jurisdictions, franchises, powers, authorities, immunities, or privileges of the Inner Temple and the Middle Temple, or either of them.

Board may grant building leases of ground not wanted for purposes of this Act.

XXXII. As regards all lands which shall be purchased or otherwise acquired by the board under the provisions of this Act, and which shall not be wanted for the purposes of the same (other than and except such lands as are by virtue of this Act reserved and excepted from the operation of this power of leasing, or are otherwise dealt with), it shall be lawful for the board, subject to the provisions of this Act, when and as they shall think fit, by an indenture or indentures under their common seal, to demise and lease such ground and hereditaments, or such part thereof as they shall think it expedient to let on building leases, either together or in parcels, to any person or persons who shall erect and build, or covenant and agree to erect and build thereon, or on any part or parts thereof, houses, erections, and buildings of such rate or class, or respective rates or classes of buildings, upon such plan and elevation, or respective plans and elevations, of such height or respective heights, and with such stories as the board shall think proper, for such number of years and under such conditions as they may think fit, and either at a rent or without any rent, but so that in every such demise or lease there be contained a covenant for the payment of the rent, if any shall be thereby reserved, and also such other covenants on the part of the tenant or lessee therein to be named as the board shall reasonably require, and also a clause in the nature of a condition of re-entry or non-payment of the rent (if any) thereby to be reserved, or on non-performance of the covenants therein to be contained on the part of the tenant or lessee to be observed and performed, and that the lessee or lessees named in every such lease shall execute a counterpart thereof, and on the negotiation for

Board may make agreements for leases and accept surrenders of leases, &c.

any such lease the board may, if they think fit, accept and take any fine for the granting thereof, and may enter into any agreement for the granting any lease or leases on such terms and conditions as they may think fit; and on the granting the leases in pursuance of such agreements may alter the amount of the rents agreed to be reserved on such leases, and may apportion the same and grant separate leases of any part of the hereditaments by any such agreement agreed to be leased, as they may think fit; and may also, as they think fit, alter or rescind any agreement as aforesaid, and may accept any surrender of any lease granted, for the purpose of granting separate leases of the same premises at apportioned rents or under different covenants, or otherwise in all respects as the board shall think fit; and further, any part of the said lands may be appropriated for squares, gardens, or open places, or for basins, docks, barge beds, or other works or conveniences as aforesaid, and any part thereof may be let for yards or courts to be attached to any houses, to be leased as the board shall think fit.

Power to board to sell the ground rents and reversions comprised in such lease.

XXXIII. As soon as conveniently may be, and either before or after the houses, erections, and buildings to be erected and built as lastly hereinbefore is mentioned, or any of them, shall be finished and completed, and either before or after such leases as last aforesaid shall have been granted, the board shall and they are hereby authorized and required to sell and dispose of the ground rents to be reserved by the leases or demises in pursuance or in consideration of which the same houses or buildings respectively shall have been erected and built, or shall be agreed to be erected and built, and also the reversion and inheritance in fee simple in possession (subject to any such lease, or demise, or agreement) of the pieces or parcels of ground thereby demised, or agreed to be demised, and such houses and other buildings thereon, either altogether or in parcels, by public auction or private contract, for such prices or sums of money as the board shall think reasonable, and subject to such stipulations and provisions as to the enjoyment thereof, and as to the nature of the buildings which are to be at all times erected and built thereon, and also subject to such stipulations as to the title to be produced to the hereditaments to be sold, as the board shall think fit; and as regards any stipulations or provisions which may be contained in any such conveyance, the same may at all times thereafter be enforced in a court of equity by the board for the benefit of the parties entitled to the other property adjoining or held under the same title, in such manner in all respects as the board may think fit; and the board shall, at the costs and charges of the purchaser of the same premises respectively, upon payment of the sum or sums of money agreed to be given for the same respectively to the

board, by any writing under their common seal convey and assure the piece or parcel of ground so purchased by such purchaser, together with the houses, erections, and buildings then erected and built, or to be erected and built thereon respectively, and the fee simple and inheritance thereof, with the appurtenances, to such purchaser, his heirs and assigns, or as he or they shall in that behalf direct, free from all incumbrances (except the building lease or building leases, or agreement or agreements to be granted thereof by virtue of this Act); and all conveyances and leases which shall be made as aforesaid pursuant to the authority hereby in the board reposed shall be adjudged sufficient to vest such estate in the purchaser or lessee as shall have been agreed for, or shall be expressed or intended to be conveyed and granted by any such conveyance or lease.

Power to board to sell any ground which may not be wanted for the purposes of this Act.

XXXIV. It shall be lawful for the board to sell in manner and subject as aforesaid, and absolutely to grant and convey, any of the lands which shall be purchased or otherwise acquired by the board as aforesaid, and which shall not be wanted for the purposes of this Act, and which they shall not think it expedient to let on building leases as aforesaid (other than and always except such lands as by virtue of this Act are reserved and excepted from the operation of this power of sale, or are otherwise dealt with), subject nevertheless to such stipulations and conditions as they may think fit, and thereupon the same shall be conveyed and assured by the board as they shall think fit.

Superfluous lands before sale to be offered to owners of lands from which they were originally severed.

XXXV. Before the board dispose of any superfluous lands they shall first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed, and if any such person be desirous of purchasing such lands, then, within six weeks after such offer of sale, he shall signify his desire in that behalf to the board, or if he decline such offer, or if for six weeks he neglect to signify his desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease, and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

XXXVI. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the board do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Application of monies arising from sale of lands or from rents.

XXXVII. The board shall apply all the monies arising by any such sale or disposition respectively as aforesaid, after paying all expenses incident to such sales or dispositions, and satisfying all lawful demands to which the lands, rents, and premises so respectively sold or disposed of shall be liable, and also apply all the rents and profits of the lands and premises to be acquired by the board under the provisions of this Act, for and towards the carrying the purposes of this Act into execution.

Surplus to be applied in reduction of monies borrowed, and subject thereto to the Embankment Fund.

XXXVIII. After the expiration of five years from the commencement of this Act, if it shall at any time appear at any annual audit of the accounts of the board that the monies received by them from any source within the previous year by virtue of this Act, and which shall be applicable to the purposes of this Act, shall have been more than sufficient to pay the expenses of the board incurred under the authority of this Act within such year, then such surplus shall be applied in paying off any monies which may have been borrowed by the board under the authority of this Act; and when all the monies which may have been borrowed by the board under the authority of this Act, and which for the time being may be owing, shall have been repaid with all interest which may have accrued due in respect thereof, the ultimate surplus in the hands of the board shall be paid over by them to the Thames Embankment and Metropolis Improvement Fund, and such surplus monies, when so paid over, shall be subject to the provisions of "The London Coal and Wines Duties Continuance Act, 1861," in relation to that fund (*a*).

XXXIX. The provisions of the Acts relating to the local management of the metropolis, namely, the Acts eighteen and nineteen Victoria, chapter one hundred and twenty, nineteen and twenty Victoria, chapter one hundred and twelve, twenty-one and twenty-two Victoria, chapter one hundred and four, shall, so far as the same are not inconsistent with the provisions of this Act, extend and apply to the objects and purposes of this Act; and the board shall, for carrying out those objects and purposes, have and may exercise all such powers, privileges, and authorities as are conferred upon them by such Acts; provided that the board shall not apply any monies which they are authorized to raise under the said Acts to the

(*a*) By section 5 of that Act, the fund is directed to be applied to the improvement of the metropolis, in such manner as might thereafter be determined by Parliament.

construction or completion (*b*) of the works specially authorized by this Act.

Costs of arbitrations under this Act (*c*).

XL. All the costs of any arbitration under this Act and incident thereto, to be settled, in case of difference, by one of the masters of the court of Queen's Bench, shall be borne by the board, unless the arbitrators shall award the same or a less sum than shall have been offered by the board, in which case each party shall bear his own costs incident to the arbitration; and the costs of the arbitrators shall be borne by the parties in equal proportions.

Use of locomotives prohibited in the streets.

XLI. It shall not be lawful for any person to use a locomotive engine propelled by steam along the streets or roadways constructed under the provisions of this Act.

Power of board to borrow on mortgage, &c.

XLII. For the purposes of this Act the board may, with the consent of the treasury, from time to time borrow by way of mortgage or bond on the security of the lands and funds acquired under and appropriated to the purposes of this Act, and at such rate of interest and upon such terms as to the time of repayment and otherwise as the treasury may approve, any sums of money the board may require for the purposes of this Act, not exceeding in the whole one million pounds.

Securities transferable by deed duly stamped.

XLIII. All the bonds and securities upon the funds so appropriated as aforesaid, and issued under the authority of this Act, shall be transferable by deed or instrument in writing duly stamped, and the right to sue in respect of the principal or interest monies secured by any such bonds or securities shall be vested in the holders thereof for the time being, without any preference by reason of some of such bonds or securities being prior in date to others.

Power to raise money for the repayment of principal money.

XLIV. The board may at any time, with such consent as aforesaid, raise by the issue of new mortgages, bonds, or other securities as aforesaid any money that may be required to pay any principal money for the time being due on any mortgages, bonds, or other securities issued in pursuance of this Act.

Appropriation of Thames Embankment and Metropolis Im-

XLV. The said Thames Embankment and Metropolis Improvement Fund shall be appropriated as follows; that is to say,

(1.) There shall be set apart thereout, and carried to such separate account at the Bank of England as the trea-

(*b*) But the cost of the future maintenance of the embankment and viaduct is, by section 22, to be provided for out of those monies.

(*c*) See sect. 1, declaring that section 34 of Lands Clauses Consolidation Act shall not be incorporated with this Act.

provement Fund.

sury may direct, such sum as the treasury may think necessary for paying off the charges created as aforesaid on the said London Bridge Approaches Fund, and for payment of all costs, charges, and expenses of and incidental to the obtaining this Act, and of the costs, charges, and expenses incurred by the board in relation thereto, and the treasury shall apply the same to such purposes accordingly:

(2.) So much of the said Thames Embankment and Metropolis Improvement Fund as remains at the time of the passing of this Act, after deducting the sum so set apart as aforesaid, shall be paid over to the board at such times and in such manner as the treasury may direct, to be applied by the board for the purposes of this Act:

(3.) All monies becoming part of the said last-mentioned fund after the passing of this Act shall be paid by the treasury to the board, in such proportions as the board may from time to time, by writing under their seal, require, and shall be applied by them, firstly, in paying the interest for the time being due on the securities authorized to be issued under this Act; secondly, in paying the principal monies from time to time becoming due on such securities; thirdly, in paying the expenses incurred in respect of the several works by this Act authorized, or in carrying this Act into execution; and lastly, in the improvement of the metropolis, in such manner as may hereafter be determined by parliament.

Monies received by the board to be paid into the Bank of England to their account.

XLVI. All sums of money, bills, and drafts which shall be received by the board under the provisions of this Act shall from time to time within two days after the same shall have been received, or within two days after any bill shall have been accepted, completed, and perfected, if the same shall not be accepted, completed, and perfected at the time it shall be received, be paid by the board into the hands of the governor and company of the Bank of England, for which the receipt of the cashier or one of the cashiers of the Bank of England shall be a sufficient discharge, and all such monies, bills, and drafts so to be paid as aforesaid shall from time to time be placed to the account of "the board" so to be opened as aforesaid, and shall be applied and disposed of by the board for and towards the carrying of the several purposes of this Act into execution.

Annual accounts to be audited, and laid before parliament.

XLVII. The board shall cause a separate account to be kept of the money borrowed by the board under this Act, and of all other monies received and expended by them under this Act; and the auditor appointed by the secretary of state, under the provisions of the Act of the eighteen and nineteen

Victoria, chapter one hundred and twenty, shall, upon his audit of the accounts of the board in every year, cause a separate account and statement to be prepared of the receipt and expenditure of the board under this Act, and the same shall be sent by the board to one of Her Majesty's principal secretaries of state, and shall be laid by him before parliament at the same time and manner as is provided in section two hundred and one of the said Act.

Owners of vessels liable for damage done to the embankment, &c.

XLVIII. In case any damage or mischief shall be done to the said embankment or roadway, or to any such quays, piers, stairs, hards, slips, or landing-places as aforesaid, or any of the works, matters, or things to be constructed or provided under the provisions of this Act, or any part thereof respectively, by any ship, lighter, barge, boat, float, raft, or vessel, through the wilful negligence of any person having the command of any such ship, lighter, barge, boat, float, raft, or vessel, or any of the mariners or persons employed therein, then and in every such case the owner of such ship, lighter, barge, boat, float, raft, or vessel is hereby made answerable to the board for the amount or value of any such damage or mischief, and the same, provided it shall not exceed the sum of 20*l.*, if not forthwith paid and satisfied, may be recovered in such manner as the penalties and forfeitures hereby imposed are by virtue of the Metropolis Local Management Act, eighteen and nineteen Victoria, chapter one hundred and twenty, directed to be recovered (*d*).

Masters compelled to pay penalties for neglect of servants, may recover the same from servants.

XLIX. In case the owner of any such ship, lighter, barge, boat, float, raft, or vessel shall be compelled to pay any penalty, or to make satisfaction for any damages, by reason of any neglect or default done or committed by his servants or mariners, or any of them, such servants, and each and every of them, shall be liable to pay such penalty or damages (with the cost thereof) to such owner; and in case of non-payment, upon demand thereof, and oath made by such owner of the payment made by him of such penalty, satisfaction, or damages, and that the same and the costs thereof have not been repaid to him by such servants or mariners, or any of them, although demanded (such oath to be made before any one or more justice or justices of the peace for the county or place where such penalty or satisfaction shall have been recovered), the amount thereof, provided the same shall not exceed the sum of 20*l.*, shall be recovered in the same manner as any penalty is by virtue of the Metropolis Local Management Act, eighteen and nineteen Victoria, chapter one hundred and twenty, directed to be recovered.

(*d*) See sect. 227 of that Act, p. 174, *ante*.

Application of penalties not appropriated.

L. When any fine or penalty shall be recovered under the authority of this Act, the application whereof is not otherwise provided for, the same shall be paid to the board, and be applied by them for the purposes of this Act.

Plaintiff not to recover without notice, or after tender of amends.

LI. No plaintiff shall recover in any action to be commenced against any person for anything done in pursuance of this Act, unless notice in writing shall have been given to the defendant, or left at his last or usual place of abode, twenty-one days before such action shall be commenced of such intended action, signed by the attorney for the plaintiff, specifying the cause of such action; nor shall the plaintiff recover if tender of good and sufficient amends shall have been made to him or his attorney by or on behalf of the defendant before such action brought, nor if such tender of amends shall be made at any time after such action brought and before the trial thereof, with costs of suit, to the time of such last-mentioned tender, but on proof of such tender on any trial to be had in such action the plaintiff shall be nonsuited, and shall pay full costs, to be recovered in the same manner as any defendant may recover costs in any other case by law; or in case no tender shall have been made, it shall be lawful for the defendant in any such action, by leave of the court wherein any such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall think fit; whereupon such proceedings, order, and judgment shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Limitation of actions.

LII. Provided always, that no action or suit shall be brought or prosecuted against any person or body for anything done in pursuance of this Act after three months next after the fact committed, or in case there shall be a continuation of damages, then after three months next after the doing or committing such damage shall have ceased, and not afterwards; and every such action or suit shall be laid and brought in the liberty or county where the matter in dispute shall arise, and not elsewhere; and the defendant in any such action or suit shall and may at his election plead specially, or plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear to have been so done, or if any such action or suit shall have been brought before twenty-one days' notice shall have been given, or after sufficient satisfaction made or tendered as aforesaid, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury or juries shall find for the defendant.

Land of the Duke of Northumberland, except that required for the formation of certain streets, not to be taken without consent.

LIII. Except with the previous consent in writing of the Most Noble Algernon, Duke of Northumberland, his heirs, sequels in estate, or assigns, the board shall not take any more land belonging to the said duke, under the provisions of this Act, than is requisite for the formation of the following streets, not exceeding sixty feet in width; that is to say, a street in continuation of Whitehall Place and a street in continuation of Northumberland Street, such streets to be made respectively in the direction shown on the plan (A.) hereinafter referred to, or within the limits of deviation shown on such plan; and, except with the previous consent in writing of the said duke, his heirs, sequels in estate, or assigns, and of the said board, no building shall be erected upon the lands taken from the said duke, his heirs, sequels in estate, or assigns, for such streets, or upon the lands coloured green upon the plan marked (A.), signed in duplicate by the Right Honourable William Cowper, one part whereof is deposited in the private bill office of the honourable the House of Commons, except any buildings for making necessary fences on the sides of such streets, or for accommodating the public with fountains or covered resting-places, or for public monuments, such buildings or monuments not exceeding nineteen feet in height above Trinity high-water mark.

As to appropriation of certain land southward of the Craven estate.

LIV. The board shall appropriate and set apart so much of the land to be acquired by them under the powers of this Act lying southward of the Craven estate, belonging to William George Craven, Esquire, as shall be necessary for the formation of a public street of not less than sixty feet in width, in continuation of Craven Street, up to and to communicate with the new street fourthly herein described, and such land shall not be used for any other purpose.

As to street between Whitehall Place and Wellington Street.

LV. The street shown upon the said deposited plans between Whitehall Place and Wellington Street shall pass on the south side of the north abutment of the Charing Cross Railway Company's bridge now constructing across the river Thames, and under the northernmost opening of such bridge.

Certain land of Charing Cross Railway Company not to be taken without consent.

LVI. The board shall not, without the consent in writing of the Charing Cross Railway Company under their common seal, enter upon or take any of the lands or property of that company coloured red upon the plan marked (B.), signed in duplicate by the Right Honourable William Cowper, one part whereof shall be deposited in the private bill office of the House of Commons, and in constructing the said street and embankment and the works connected therewith shall not in any manner injure the said railway or works, but shall submit the plans of the works passing under and affecting the

said railway to John Hawkshaw or other the engineer of the said Charing Cross Railway Company, and construct the same to his reasonable satisfaction.

As to repair of Charing Cross Railway and works.

LVII. Notwithstanding anything in this Act contained, it shall be lawful for the said company, after notice to the board, and subject to their reasonable regulations, at all times hereafter to enter upon and use, for the purposes of repairing, amending, or restoring their railway and works, and their steamboat pier and landing-place at Hungerford, and the works connected therewith, so much of the said street or embankment as adjoins to or passes under the said railway and works.

As to construction of landing-places.

LVIII. No public landing-place, pier stairs, or quay for landing passengers (other than such as shall be substituted for the present Adelphi Pier at the site now occupied by that pier) shall be constructed under the powers of this Act on the south side of the said embankment, within 150 yards on either side of the steamboat pier belonging to the Charing Cross Railway Company at Hungerford.

Saving rights of Charing Cross Railway Company.

LIX. Except as is by this Act otherwise expressly provided, nothing in this Act contained shall take away, lessen, prejudice, or derogate from any of the estates, rights, interests, liberties, or privileges of the Charing Cross Railway Company.

Provision as to the land belonging to the Duke of Norfolk.

LX. Opposite the Strand estate of the Duke of Norfolk, the north side of the approach road, and the approaches therefrom to Surrey Street, Norfolk Street, and Arundel Street respectively, shall be constructed on the line and in the position shown on the plan marked (C.), signed by the Right Honourable William Cowper.

The board shall not exercise any powers of compulsory purchase in respect of any estate, right, or interest of the Duke of Norfolk in the Strand estate, except so far as may be necessary for the construction of the said approach road and approaches.

No buildings shall be placed on the reclaimed land between Somerset House and the Middle Temple southward of the said approach road on the said plan, except the walls or arches of the embankment or of any roads or approaches to be made on the said land, and except any public stairs or landing-places, fountains and covered resting-places for public use or public monuments.

All the land between the present southern boundary of the Strand estate and the north boundary of the said approach road, and the freehold and inheritance thereof, shall, upon

payment or allowance to the board of the value thereof, vest in the Duke of Norfolk by force of this Act, and be held by him as part and parcel of the Strand estate.

The Duke of Norfolk shall have power to build up to the line of the footways on the north side of such approach road, and on both sides of the approaches to Surrey Street, Norfolk Street, and Arundel Street respectively, and have free access to the said approach road and approaches.

The compensation to be paid to the Duke of Norfolk by the board for the value of or injury to his property, and the sum to be paid by the Duke of Norfolk to the board for the value of the land so hereby vested in him, shall, in case of dispute, be settled in the manner prescribed by this Act.

Throughout this Act the expression the "Duke of Norfolk" means Henry now Duke of Norfolk, and every future owner in possession of "the Arundel estates," and every guardian or guardians of the said Henry Duke of Norfolk and every such future owner during his minority; and the expression "the Arundel estates" means the estates for the time being settled or conveyed to the uses of an Act of parliament passed in the third year of the reign of King Charles the First (whereby certain estates were settled upon the heirs male of Thomas Earl of Arundel and Surrey), and in the possession of the Duke of Norfolk for the time being; and the expression "the Strand estate" means such parts of the Arundel estates as are situate in the parish of Saint Clement Dane in the county of Middlesex.

Provision as to the Adelphi estate.

LXI. The board shall not take by compulsion under the powers of this Act any other part of the Adelphi estate in the parish of Saint Martin in the Fields, belonging to or claimed by George James Drummond, than such as shall be required for the making of the roadway and footpath of the street in this Act described, between Whitehall Place and Wellington Street; and the land reclaimed under this Act from the river Thames, and lying between the Adelphi estate and the northern side of the line of that street, shall be subject to the like restrictions and provisions in respect to buildings and other matters which might occasion injury or annoyance to the adjoining property, or the owners or occupiers thereof, as are under the Act of the eleventh year of the reign of King George the Third, intituled "An Act to enable certain Persons to enclose and embank Part of the River Thames adjoining to Durham Yard, Salisbury Street, Cecil Street, and Beaufort Buildings in the County of Middlesex," enacted, and as are now in force in respect of that part of the Adelphi estate which immediately adjoins thereto, and was enclosed and embanked under that Act; and the same land so lying between the Adelphi estate and the northern side of such line of street, and the fee simple and inheritance thereof in possession, shall upon the

completion of the same street, or of that portion thereof which shall pass in front of the said Adelphi estate, or on the completion of the embankment by this Act authorized, which event shall first happen, and on payment of the balance, if any, which, under the arbitration hereinafter referred to, will have to be paid by the said owner to the board, vest in the owner of the said Adelphi estate; and the amount of compensation to be paid by the board in respect of any land purchased, and for any damage done to the said Adelphi estate by the execution of the powers of this Act, to which the said owner may be entitled, under the provisions of this Act, and also the value of the said land so to be vested in the owner of the Adelphi estate, shall be settled by arbitration, pursuant to the provisions of this Act; and the sum or sums awarded in respect of the value of the land to be so vested and in respect of such compensation may be set off one against the other, and the difference shall be paid by the owner to the board, or by the board to the owner, as the case may be: Provided always, that no building shall be erected between the land so vested in the owner of the said Adelphi estate and the river Thames other than the walls or arches of the embankment or of any roads or approaches to be made on the said land, and except any public stairs or landing-places, fountains, and covered resting-places for public use, or public monuments.

Buildings not to be erected between the property of the Marquis of Salisbury and the river.

LXII. No house or building shall be constructed without the consent of the Marquis of Salisbury, his heirs, sequels in right, or assigns, upon any land now lying between, or which shall or may after the reclamation and enclosure of the bed and foreshore of the river, lie between Cecil Street and Salisbury Street, and the houses on the southern ends thereof on the north and the river Thames on the south, other than the walls or arches of the embankment, or any roads or approaches to be made on the said land, and except any public stairs or landing-places, fountains, and covered resting-places for public use or public monuments; but the said marquis, his heirs and assigns, and his and their lessees and tenants of houses and premises in Cecil Street and Salisbury Street respectively, shall have full and free rights of communication, and access and egress, at all times, to and from the land so to be reclaimed and enclosed as aforesaid, and the board shall provide and construct such convenient means of communication therewith as may be necessary for giving to the marquis, his heirs and assigns, and his and their lessees and tenants, such access accordingly.

Junction with Salisbury Street not to be con-

LXIII. No roadway to Salisbury Street shall be constructed without the consent of the said marquis, his heirs or assigns, and if so constructed shall not be open to the public except

for foot passengers, unless the said marquis, his heirs or assigns, shall by some writing under his or their hand or hands signify his or their intention to dedicate it to the public for other purposes, to be specified in such writing or writings. structed without consent of Marquis of Salisbury.

LXIV. Except as herein expressly provided, nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the estates, rights, interests, privileges, franchises, or authority of the mayor and commonalty and citizens of the city of London, or of the lord mayor of the said city for the time being. Nothing to prejudice rights of the corporation of London.

LXV. Except as herein expressly provided, nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the rights of the conservators of the river Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the said conservators did or might lawfully claim, use, or exercise. Saving rights of the conservators of the Thames (*e*).

LXVI. Nothing in this Act shall interfere with the powers given by law to the commissioners of the police of the metropolis. Saving powers of metropolitan police (*f*).

LXVII. If the board in the course of the construction of the works hereby authorized shall interrupt the course of any main or other sewer or drain, or the flow of sewage therefrom, the board shall, until the low-level sewer is available, provide a proper and sufficient substitute before the flow of sewage in any such sewer or drain is so interrupted. As to interference with sewers.

LXVIII. Nothing in this Act contained shall in any manner prejudice or affect any of the powers of the commissioners of sewers of the city of London (*g*) further than may be absolutely necessary for effecting the works by this Act authorized; and any expense which such commissioners may incur in making any additional sewers or drains, or altering any existing sewers or drains (not being main drains), in consequence of the removal, destruction, alteration, or diversion or Saving rights of commissioners of sewers.

(*e*) See 20 & 21 Vict. c. 147, an Act to provide for the conservation of the river Thames, and for the regulation, management, and improvement thereof. See the 58rd and following sections, authorizing the conservators to grant licences for the making of basins, piers, embankments, &c. Some of these powers must be superseded by the provisions of the present Act.

(*f*) The Acts relating to the police and police courts of the metropolis, are the 12 Geo. 4, c. 44, 2 & 3 Vict. c. 47, and the 2 & 3 Vict. c. 71.

(*g*) The City Sewers Act, 1848, 11 & 12 Vict. c. 163, and the Continuing and Amending Act, 14 & 15 Vict. c. 91.

stopping up any existing sewers or drains, shall be repaid to them by the board.

Saving rights of district boards and vestries.

LXIX. Except only as by this Act expressly provided, nothing in this Act contained shall take away, lessen, prejudice, or alter any of the powers, rights, privileges, and authorities of any district board or vestry.

Saving of rights of companies herein named.

LXX. Except as herein is specially provided, nothing in this Act shall prejudice, diminish, alter, or affect any of the rights, privileges, powers, or authorities by law vested in the Charing Cross Bridge Company, the Waterloo Bridge Company, the Corporation of London in respect of Blackfriars Bridge, the commissioners of Her Majesty's works and public buildings in respect of Westminster Bridge (*h*) and the London, Chatham, and Dover Railway Company respectively.

No deviation in works opposite crown land without consent.

LXXI. Whereas two copies of the aforesaid plans and sections (which copies are hereinafter called the crown plans) have been prepared, on which certain parts of the bed or foreshore of the river Thames up to high-water mark, belonging to or claimed by Her Majesty as part of the hereditary land revenues of the crown, are coloured blue, and other parts of the same bed or foreshore in front of Somerset House and of the buildings in Cannon Row, commonly called the Board of Control, respectively are coloured green, and other parts of the same bed or foreshore in front of certain land belonging to the commissioners of Her Majesty's works and public buildings, incorporated for the purposes of "The Westminster Bridge Act of 1853," are coloured red, and on which crown plans the line of the roadway and street authorized by this Act on the said parts of the said bed or foreshore, coloured blue, green, and red respectively is confined between red and black lines, and the line of the Whitehall Yard Street authorized by this Act on the said bed or foreshore coloured blue is confined between red lines: and whereas the said crown plans have been or are intended to be forthwith signed by the first commissioner of Her Majesty's works and public buildings and by one of the commissioners of Her Majesty's woods, forests, and land revenues: Be it enacted, that one part of the said crown plans so signed as aforesaid shall be deposited among the records of Her Majesty's court of Exchequer, and the other part thereof in the office of land revenue records and enrolments, as soon as conveniently may be after the passing of this Act (if not so deposited previously to the passing thereof); and it shall not be lawful for the board, in the construction of the said intended roadway and street respec-

(*h*) See 16 & 17 Vict. c. 46, for transferring Westminster Bridge, &c., to the commissioners of Her Majesty's Works, and for enabling those commissioners to remove the then existing bridge and build a new one.

tively, to make any deviation from the levels defined in the sections shown on the crown plans, nor from the limits of deviation defined by the said red and black lines and red lines respectively on the said crown plans, without the consent in writing of the first commissioner of Her Majesty's works and public buildings as regards the bed or foreshore coloured green and red on such plans, or of one of the commissioners of Her Majesty's woods, forests, and land revenues for the time being as regards the bed or foreshore coloured blue on such plans.

Works to be done before roadway on crown lands opened to public.

LXXII. The board shall, at their expense, before opening to the public the parts of the intended roadway which will be constructed on the bed or foreshore coloured blue and green respectively on the crown plans, fill up, level, and wall or fence all those parts of the said bed or foreshore coloured blue and green respectively lying between the intended roadway and the present river frontage (above high-water mark), to the satisfaction in all respects of the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, as to the bed or foreshore coloured blue, and of the first commissioner of Her Majesty's works and public buildings as to the bed or foreshore coloured green, and such filling up and levelling (unless such last-mentioned commissioners respectively shall otherwise direct in writing under their respective hands as to the whole or any part thereof) shall be done to the level of the adjoining river frontage above high-water mark, and of the said intended roadway and street respectively on the side or sides abutting thereon respectively.

Disposal of reclaimed land in which crown interested.

LXXIII. The bed or foreshore so filled up, levelled, and walled or fenced as aforesaid shall, as to the part coloured blue, continue vested in Her Majesty, her heirs and successors, and shall as to the part coloured green be annexed to and be deemed to form part of Somerset House and the house heretofore known as the Board of Control respectively for all purposes whatsoever, and it shall not be lawful for the board to use any part of the bed or foreshore coloured blue or green so to be filled up as aforesaid for the purpose of depositing materials, except during the construction of the works, nor to appropriate or grant any part of such bed or foreshore, or any right or easement to, over, or in connexion therewith, by way of compensation to any person for loss of river frontage or other damage, it being the intention of this Act that the same respectively shall be and remain vested and annexed as aforesaid in possession, without becoming subject to any rights or estates of or in any lessees of the river frontage or other persons, except only so far as any lessees may exercise the option by this Act given to them of taking leases of the reclaimed land; and after such filling up, levelling, and walling or fencing aforesaid of the said bed or foreshore coloured blue

and green respectively, and the embankment in front thereof, shall have been completed, it shall not be lawful for the board to enter on the parts so filled up, levelled, and walled or fenced for any purpose whatsoever.

No building to be erected on embankment opposite land in which crown interested without consent.

LXXIV. It shall not be lawful for the board to erect any building or structure whatever (other than a parapet wall or railing not exceeding four feet in height) on any part of the embankment coloured blue, green, or red on the said crown plans, without the consent in writing of the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, as regards the part coloured blue, or of the first commissioner of Her Majesty's works and public buildings as regards the parts coloured green and red.

Mode of ascertaining value of interest of crown and Thames conservators in certain lands.

LXXV. An estimate shall be made of the amount of any diminution in value which may be caused by the works by this Act authorized (except of so much thereof as will be situate on the lands coloured blue, green, or red on the crown plans, for which excepted parts no money compensation is to be paid,) of the rights and interest of Her Majesty in right of her crown, and of the conservators of the river Thames under "The Thames Conservancy Act, 1857;" and the amount of such estimate shall be paid by the board to the conservators, to be applied by them according to the provisions of the same Act, by way of compensation for the rights and interests aforesaid; and the said estimate shall be made by two arbitrators or their umpire in manner following; viz., one such arbitrator shall be appointed by the board, and the other by the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, within one month after the passing of this Act; and such arbitrators shall before they commence their duty appoint an umpire in writing; and if within twenty-one days after both arbitrators have been appointed they shall omit or refuse to appoint an umpire as aforesaid, it shall be lawful for the commissioners of Her Majesty's treasury to appoint an umpire, which appointment shall be valid, whether the arbitrators have then commenced their duty or not; and if either party shall neglect or refuse to appoint an arbitrator as aforesaid, the arbitrator appointed by the other party shall act alone; and the decision of such arbitrators, or arbitrator or umpire (as the case may be), shall be final; and all the costs and expenses of the valuation to be incurred by either party shall be borne and paid by the board.

No compensation to crown in respect of land above

LXXVI. The board shall not be liable to pay to Her Majesty, her heirs or successors, any compensation for any damage or injury which may be caused to any of the lands belonging to Her Majesty, her heirs and successors, in

right of the crown above high-water mark by reason of the severance from the river Thames and of the construction of the roadway on the embankment by this Act authorized. high-water mark.

LXXVII. Whenever the board shall shut up, remove, or in any manner obstruct the use and enjoyment of any existing stairs, hards, or landing-places on or in front of any part of the bed or foreshore coloured blue, green, or red in the said crown plans, they shall, at their own expense, construct and maintain other stairs or landing-places in lieu thereof, to the satisfaction of the commissioners of Her Majesty's woods, forests, and land revenues, as regards the part coloured blue, and of the first commissioner of Her Majesty's works and public buildings as regards the parts coloured green and red respectively, such substituted stairs or landing-places to be for the sole use and enjoyment of Her Majesty, her heirs and successors, or such other person or persons as are or would have been entitled to the use and enjoyment of the stairs or landing-places in lieu whereof the same respectively shall have been constructed; and it shall not be necessary to obtain the approval of the conservators of the river Thames before constructing such stairs or landing-places, nor shall the same vest in the said conservators, any general provisions in this Act notwithstanding; and the board shall, at their own expense, construct and maintain such roads, ways, and other communications into the said intended roadway from the lands or buildings adjoining the parts coloured green and red respectively on the said crown plans, and also such stairs and other conveniences for access to the river from the same lands, as the commissioners of Her Majesty's Treasury shall from time to time during the construction of the works authorized by this Act in writing require, and shall on the like requisition afterwards stop up and discontinue the same or any of them; and it shall be lawful for Her Majesty, her heirs and successors, or the commissioners for the time being of Her Majesty's woods, forests, and land revenues, at any time or times hereafter to require the board, at the expense of the said commissioners, to construct any vaults or cellars extending not more than twelve feet under any roadway or street to be constructed upon any part of the said bed or foreshore coloured blue, and also to have access at all points to such roadway or streets from any part of the hereditary possessions of the crown, and to open any streets into the same; and it shall also be lawful for the commissioners for the time being of Her Majesty's works and public buildings, with the consent or by the direction of the lords commissioners of Her Majesty's treasury, at any time or times hereafter, to require the board, in like manner, and at the expense of the said commissioners, to construct any such vaults or cellars as New landing places to be provided where existing ones removed.

aforesaid under the roadway or streets to be constructed upon any part of the said bed or foreshore coloured green or red, and also to have access at all points to such roadway or streets from any part of the buildings or land adjoining the said parts coloured green and red respectively, and to open any streets into the same: Provided always, that no work to be done under the foregoing provision shall be such as to prejudice or injuriously affect any subway or other works of the board, or the convenient use thereof by the public.

Crown lessees to have option of taking lease of reclaimed land adjacent to their properties for terms of their leases.

LXXVIII. It shall be lawful for the lessees of Her Majesty of the river frontage, adjacent to so much of the land and foreshore coloured blue on the crown plans as lies between Whitehall Stairs and the southern extremity of the land and foreshore so coloured blue, to have the option (to be signified by notice in writing under the hands of such lessees respectively, and to be left at the office of the commissioners of Her Majesty's woods, forests, and land revenues), within five years after the passing of this Act, of taking leases from the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, of the land and foreshore adjacent to their respective leasehold properties which will intervene between the same and the intended roadway for terms co-extensive with their several existing leases, and at rents to be fixed as hereinafter provided; and in case any question shall arise as to the lessees or lessee entitled to such option, or as to the extent of land and foreshore to be included in any lease, every such question shall be settled by the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, whose decision shall be final; and the rents to be reserved by such leases shall in every case be fixed by the arbitration of two surveyors, one to be nominated by the commissioners of Her Majesty's woods, forests, and land revenues, or one of them, and the other by the lessees respectively, or by an umpire to be appointed by such arbitrator, or to be agreed to in the first instance by the said commissioners or commissioner and lessees respectively; and such rent shall be estimated on the basis of a fair rental on the land as garden ground which cannot be built upon; and in any claim for compensation by the said lessees on the ground of their lands or interests being injuriously affected by reason of the works by this Act authorized, regard shall be had to the option by this section given to such lessees of taking leases of the land and foreshore adjoining to their respective properties at such rent as aforesaid.

Saving rights of crown under Con-

LXXIX. Except as specially provided by this Act, all the rights and interests of Her Majesty, her heirs and successors,

nnder the Thames Conservancy Act, 1857, shall continue unaffected and in full force. servancy Act (*i*).

Saving rights of the crown generally.

LXXX. Nothing contained in this Act shall authorize the board to take, use, or in any manner interfere with any land, tenements, or hereditaments, or any rights, of whatsoever nature, claimed by or belonging to or enjoyed or exercisable by the Queen's most excellent Majesty in right of her crown, other than the lands, tenements, hereditaments, or rights below high-water mark, for the acquisition whereof express provision is made by this Act, without the consent in writing of the commissioners for the time being of Her Majesty's woods, forests, and land revenues, or one of them, on behalf of Her Majesty, first had and obtained for that purpose (which consent such commissioners are hereby respectively authorized to give); neither shall anything in this Act contained divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exercisable by the Queen's Majesty, her heirs or successors.

Provision as to land belonging to the duchy of Lancaster.

LXXXI. A valuation of any lands, tenements, or hereditaments, or of any rights and interests whatsoever vested in, belonging to, or enjoyed or exercisable by Her Majesty, her heirs and successors, in right of her duchy of Lancaster, which shall be required to be taken, used, or interfered with by the said board for the purposes of this Act, shall be made, and the amount of such valuation shall be paid by the said board to the receiver-general of the revenues of the said duchy, or his sufficient deputy or deputies, before the said board shall commence any works within the manor or precinct of the Savoy, or within any lands vested in or belonging to Her Majesty in right of her said duchy; and the said valuation shall be made by two arbitrators in manner following; that is to say, one arbitrator shall be appointed by the board, and the other by the chancellor for the time being of the said duchy, within one month after the passing of this Act; and such arbitrators shall, before they commence their duty, appoint an umpire in writing; and if within twenty-one days after both arbitrators have been appointed they shall omit or refuse to appoint an umpire as aforesaid, it shall be lawful for the lords commissioners of Her Majesty's treasury to appoint an umpire, which appointment shall be valid, whether the arbitrators have then commenced their duty or not; and if either party shall neglect or refuse

(*i*) Compare sect. 51 of Thames Conservancy Act, 20 & 21 Vict. c. 147, excepting from the property vested in the conservators under that Act certain portions of the bed or soil or shore of the river Thames.

to appoint an arbitrator as aforesaid, the arbitrator appointed by the other party shall act alone; and the decision of such arbitrators or arbitrator or umpire (as the case may be) shall be final; and all the costs and expenses of the valuation shall be borne and paid by the said board; and the amount of valuation paid to the receiver-general shall be dealt with as purchase monies for lands sold under the "Duchy of Lancaster Sales Act, 1855," and upon payment thereof the chancellor and council may execute a grant or assurance to the board of the lands, tenements, or hereditaments, rights or interests, in respect of which such payment shall have been made, as provided in the case of a sale under that Act.

Street viaduct within Savoy precinct to be constructed to satisfaction of duchy of Lancaster surveyor, and saving rights of duchy of Lancaster.

LXXXII. The street viaduct within the precinct of the Savoy shall be constructed to the satisfaction of the surveyor in that behalf of the duchy of Lancaster, and so as not to interfere with the chapel of St. John the Baptist in the said precinct, and as little as possible with the yard of the said chapel; and in constructing the said viaduct the board shall not, without the consent in writing of the chancellor and council for the time being of the said duchy on behalf of Her Majesty in right of her said duchy first had and obtained for that purpose, which consent the said chancellor and council are hereby authorized to give, enter upon, use, or take any more ground than shall be actually requisite for the construction thereof, and the ground between the pillars under the said viaduct shall remain and be vested in Her Majesty, her heirs and successors, in right of her said duchy; and nothing in this Act shall authorize the board to take, use, or in any manner interfere with any land, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exercisable by Her Majesty in right of her duchy of Lancaster, other than the lands, tenements, and hereditaments or rights for the acquisition whereof provision is made by the next immediately preceding section of this Act, without the consent in writing of the chancellor and council for the time being of the said duchy, on behalf of Her Majesty, in right of her said duchy, first had and obtained for that purpose (which consent the said chancellor and council are hereby authorised to give); neither shall anything in this Act contained divest, take away, prejudice, diminish, or alter any estate, right, title, privilege, power, or authority vested in or enjoyed or exercisable by Her Majesty, her heirs or successors, in right of her said duchy.

Viaduct in front of City gasworks.

LXXXIII. The viaduct in front of the works and premises of the City of London Gaslight and Coke Company shall be carried upon two arches, having each a span of seventy feet at the least, and a headway beneath the same of not less than eight feet above Trinity high-water mark.

LXXXIV. There shall be one arch under the said viaduct in front of the Whitefriars dock, having a span of seventy feet at the least, and having a headway beneath the same of not less than eight feet above Trinity high-water mark. Viaduct in front of Whitefriars dock.

LXXXV. Within two months after the passing of this Act the several supplemental plans herein referred to as signed by the Right Honourable William Cowper, and marked respectively A., B., and C., shall be deposited with the clerk of the peace for the county of Middlesex, who shall receive and retain them, and permit all persons interested to inspect them, and make copies and extracts of and from them, in like manner, upon the like terms, and under the like penalty for default, as by the Act of the first year of the reign of Her present Majesty, chapter eighty-three, is provided with respect to the documents therein specified. Supplemental plans marked A. B. and C. to be deposited with clerk of peace of Middlesex.

SCHEDULE.

Form of Mortgage.

In pursuance and by virtue of "The Thames Embankment Act, 1862," we, the metropolitan board of works, do hereby, in consideration of the sum of £—— paid to us by —— of —— [*&c.*] for the purposes of this Act, assign to the said —— executors, administrators, and assigns, such part or proportion of the Thames Embankment and Metropolis Improvement Fund under "The London Coal and Wine Duties Continuance Act, 1861," and of the monies from time to time payable to us out of the fund by virtue of the first hereinbefore mentioned Act, as the said sum of £—— bears to the whole amount from time to time borrowed by us on the security of that fund and of the monies last aforesaid, to hold to the said —— executors, and assigns, until the sum of £—— with interest thereon at the rate of £—— per centum per annum from the day of the date hereof, and to be paid half-yearly, shall be fully paid. As witness our corporate seal, this —— day of —— in the year of our Lord 18—.

18 & 19 VICT. CAP. 122.

AN ACT

TO AMEND THE LAWS RELATING TO THE CONSTRUCTION OF BUILDINGS IN THE METROPOLIS AND ITS NEIGHBOURHOOD (a).

14TH AUGUST, 1855.

WHEREAS it is expedient that the laws relating to buildings in the metropolis and its neighbourhood should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

Preliminary.

Short title.

I. This Act may be cited for all purposes as "The Metropolitan Building Act, 1855."

Commencement of Act.

II. This Act shall, except in cases where it is otherwise expressly provided, come into operation on the 1st day of January, 1856.

Interpretation of certain terms in this Act.

III. In the construction of this Act (if not inconsistent with the context) the following terms shall have the respective meanings hereinafter assigned to them; (that is to say,)

"The treasury" shall mean the commissioners of Her Majesty's treasury:

"Public building" shall mean every building used as a church, chapel, or other place of public worship; also

(a) The former Metropolitan Building Act, 7 & 8 Vict. c. 84, was held to be an Act of a local and personal nature, though the 119th section declared it to be a public Act. *Richards* v. *Easto*, 15 M. & W. 244.

every building used for purposes of public instruction; also every building used as a college, public hall, hospital, theatre, public concert room, public ball room, public lecture room, public exhibition room, or for any other public purposes:

"External wall" shall apply to every outer wall or vertical enclosure of any building not being a party wall:

"Party wall" shall apply to every wall used or built in order to be used as a separation of any building from any other building with a view to the same being occupied by different persons:

"Cross wall" shall apply to every wall used or built in order to be used as a separation of one part of any building from another part of the same building, such building being wholly in one occupation:

"Party structure" shall include party walls, and also partitions, arches, floors, and other structures separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without:

The "area" of every building shall be deemed to be the superficies of a horizontal section of such building made at the point of its greatest surface, including the external walls and such portion of the party walls as belong to the building, but excluding any attached building the height of which does not exceed the height of the ground story:

"The base of the wall" shall mean the course immediately above the footings:

"Owner" shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement other than as a tenant from year to year or for any less term, or as a tenant at will:

"Builder" shall apply to and include the master builder or other person employed to execute or who actually executes any work upon any building:

"District surveyor" shall mean every such surveyor who is appointed in pursuance of this Act, or whose appointment is hereby confirmed, and shall include any deputy or assistant surveyor appointed under this Act:

In all cases in which the name of an officer having local jurisdiction in respect of his office is referred to without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the officer having jurisdiction in that place within which is situate the building or other subject matter or any part thereof to which such reference applies:

"Person" shall include "a body corporate."

Limits of Act.

Act to extend to all places within limits defined by 18 & 19 Vict. c. 120 (*b*).

IV. This Act shall extend to all places within the limits of the metropolis as defined by an Act passed in the present session of parliament, intituled "An Act for the better Local Management of the Metropolis," and to all other places to which such last-mentioned Act may be extended, unless such places are in making such extension expressly excepted from the operation of this Act; but nothing herein contained shall affect the exercise of any powers vested by any Act of parliament in the commissioners of sewers (*c*) of the city of London for the time being.

Division of Act.

V. This Act shall be divided into five parts:

(1.) The first part relating to the regulation and supervision of buildings:

(2.) The second part relating to dangerous structures:

(3.) The third part relating to party structures:

(4.) The fourth part relating to miscellaneous provisions:

(5.) The fifth part relating to the repeal of former Acts, and to temporary provisions.

PART I.

REGULATION AND SUPERVISION OF BUILDINGS (*d*).

Buildings, &c. herein named exempt from operation of Part I. of this Act.

VI. The following buildings and works shall be exempt from the operation of the first part of this Act:

Bridges, piers, jetties, embankment walls, retaining walls, and wharf or quay walls:

Her Majesty's royal palaces, and any building in the possession of Her Majesty, her heirs and successors, or employed for Her Majesty's use or service: (*e*)

(*b*) See sect. 250 of 18 & 19 Vict. c. 120, *ante*, as to definition of metropolis, and sect. 249 as to extension thereof by order in council, and sect. 42 of 25 & 26 Vict. c. 102, *ante*, as to notice before proceedings under the last-mentioned provision.

(*c*) See powers of these commissioners, 11 & 12 Vict. c. 163, s. 61, *et seq.*

(*d*) See as to what is a building, *Stevens* v. *Garnby*, note (*h*) to s. 8, *post*.

(*e*) Buildings erected by commissioners of lieutenancy of the city of London for the custody of the arms and stores of militia, fall within the description, and are exempt. *R.* v. *Jay*, 27 L. J. (N. S.) M. C. 25. By the amending Act, the 24 & 25 Vict. c. 87, *post*, it is declared that the first part of this Act shall not apply to buildings erected or to be erected by the commissioners of the exhibition of 1851 on their lands, except streets, &c., erected as private dwelling houses.

Common gaols, prisons, houses of correction, and places of confinement under the inspection of the inspector of prisons, and Bethlehem Hospital, and the house of occupations adjoining:

The Mansion House, Guildhall, and Royal Exchange of the city of London:

The offices and buildings of the governor and company of the Bank of England already erected, and which now form the edifice called "The Bank of England," and any offices and buildings hereafter to be erected for the use of the said governor and company, either on the site of or in addition to and in connexion with the said edifice:

The buildings of the British Museum:

The offices and buildings of the Honourable East India Company already erected, and any offices or buildings hereafter to be erected, for the use of the said company, on the site of or in addition to such existing offices and buildings:

Greenwich Hospital and the buildings in the parish of Greenwich vested in the commissioners of Greenwich Hospital for the purposes of the said hospital:

All county lunatic asylums, sessions houses, and other public buildings belonging to or occupied by the justices of the peace of the county or city in which the same are situated:

The erections and buildings authorized by an Act passed in the ninth year of the reign of his late Majesty King George the Fourth for the purposes of a market in Covent Garden:

The cattle market, with its appurtenances, erected in pursuance of the Metropolitan Cattle Market Act, 1851:

The buildings belonging to any canal, dock, or railway (*f*) company, and used for the purposes of such canal, dock, or railway, under the provisions of any Act of parliament:

All buildings, not exceeding in height thirty feet, as measured from the footings of the walls, and not exceeding in extent one hundred and twenty-five thousand cubic feet, and not being public buildings, wholly in one occupation, and distant at least eight feet from the nearest street or alley, whether public or private, and at the least thirty feet from the nearest buildings and from the ground of any adjoining owner:

All buildings not exceeding in extent two hundred and sixteen thousand cubic feet, and not being public build-

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(*f*) See as to exemption of railway arches, *North Kent Railway Company* v. *Badger*, 27 L. J. (N. S.) M. C. 106.

ings (*g*), and distant at least thirty feet from the nearest street or alley, whether public or private, and at the least sixty feet from the nearest buildings and from the ground of an adjoining owner:

All party fence walls and greenhouses so far as regards the necessary woodwork of the sashes, doors, and frames:

Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than forty square inches, if such valves are not nearer than twelve inches to any timber or other combustible material.

Application of Act, except exemptions before mentioned.

VII. With the exemptions hereinbefore mentioned this Act shall apply to all new buildings; and whenever mention is herein made of any building, it shall, unless the contrary appears from the context, be deemed to imply a new building.

Building when deemed to be new.

VIII. A building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the said first day of January, one thousand eight hundred and fifty-six (*h*): Any other building shall be deemed to be an old building.

Alterations of and additions to old buildings.

IX. Any alteration, addition, or other work made or done for any purpose, except that of necessary repair not affecting the construction of any external or party wall (*i*), in, to, or upon any old building, or in, to, or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition, or work, be subject to the regulations of this Act (*k*); and whenever mention is hereinafter made of any alteration, addition, or work in, to, or upon any building, it shall, unless the contrary appears from the context, be deemed to imply an alteration, addition, or work to which this Act applies.

Rebuilding old buildings.

X. Whenever any old building has been taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of

(*g*) See definition of public building, sect. 3, *ante*.

(*h*) This was held to apply only to buildings which were constructed before 1st June, 1856, *Stevens* v. *Gourley*, 29 L. J. (N. S.) C. P. 1. A shop of wood, without footing or brickwork for a foundation, built on wooden joists laid on the ground, without being let into or fastened to the soil, is a building within the meaning of this Act; *Stevens* v. *Gourley*, supra.

(*i*) Where an old door-frame was removed, and a new one substituted, the brickwork around it, which was decayed, being reinstated, but the opening for the doorway not being enlarged, this was held not to be a work which affected the construction of an external wall; *Badger* v. *Down*, 22 J. P. 129.

(*k*) See sect. 38 as to notices to district surveyors.

such old building that is not in conformity with the regulations of this Act shall be forthwith taken down.

Division of old buildings separated by irregular partitions.

XI. Whenever any old buildings are separated by timber or other partitions not in conformity with this Act, then, if such partitions are removed to the extent of one-half thereof, such buildings shall, as respects the separation thereof, be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this Act.

Walls.

Structure and thickness of walls.

XII. Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule annexed hereto.

Recesses and Openings.

Rules as to recesses and openings.

XIII. The following rules shall be observed with respect to recesses and openings in walls:

Recesses and openings may be made in external walls, provided,

1. That the backs of such recesses are not of less thickness than eight and a half inches; and,
2. That the area of such recesses and openings do not, taken together, exceed one-half of the whole area of the wall in which they are made:

Recesses may be made in party walls, provided that,

1. The backs of such recesses are not of less thickness than thirteen inches; and,
2. That every recess so formed is arched over, and that the area of such recesses do not, taken altogether, exceed one-half of the whole area of the wall of the story in which they are made; and
3. That such recesses do not come within one foot of the inner face of the external walls;

But no openings shall be made in any party wall except in accordance with the rules of this Act.

The word area, as used in this section, shall mean the area of the vertical face, or elevation of the wall, pier, or recess to which it refers.

Miscellaneous.

As to timber in external walls.

XIV. Loophole frames may be fixed within one inch and a half of the face of any external wall; but all other woodwork fixed in any external wall, except bressummers and story posts under the same, and frames of doors and windows of shops on the ground story of any building, shall be set

back four inches at the least from the external face of such wall.

Rules as to bressummers.

XV. The following rules shall be observed with respect to bressummers and timbers:

1. Every bressummer must have a bearing in the direction of its length of four inches at the least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron story post fixed on a solid foundation, in addition to its bearing upon any party wall; and the ends of such bressummer shall not be placed nearer to the centre line of the party walls than four and a half inches:
2. No bond timber or wood plate shall be built into any party wall, and the ends of any beam or joist bearing on such walls shall be at the least four and a half inches distant from the centre line of the party walls:
3. Every bressummer bearing upon any party wall must be borne by a templet or corbel of stone or iron tailed through at least half the thickness of such wall, and of the full breadth of the bressummer.

Height and thickness of parapets to external walls.

XVI. If any gutter, any part of which is formed of combustible materials, adjoins an external wall, then such wall must be carried up so as to form a parapet one foot at the least above the highest part of such gutter, and the thickness of the parapet so carried up must be at the least eight and a half inches, reckoned from the level of the under side of the gutter plate.

Height of party walls above roof.

XVII. Every party wall shall be carried up above the roof, flat, or gutter of the highest building adjoining thereto, to such height as will give a distance of fifteen inches measured at right angles to the slope of the roof, or fifteen inches above the highest part of any flat or gutter, as the case may be; and every party wall shall be carried up above any turret, dormer, lantern light, or other erection of combustible materials fixed upon the roof or flat of any building within four feet from such party wall, and shall extend at the least twelve inches higher and wider on each side than such erection; and every party wall shall be carried up above any part of any roof opposite thereto, and within four feet from such party wall.

As to chases in party walls.

XVIII. In a party wall no chase shall be made wider than fourteen inches, nor more than four and a half inches deep from the face of the wall, nor so as to leave less than eight and a half inches in thickness at the back or opposite side thereof, and no chase may be made within a distance of seven feet from any other chase on the same side of the wall.

XIX. The roofs of buildings shall be constructed as follows; that is to say, As to construction of roofs.

1. The flat, gutter, and roof of every building, and every turret, dormer, lantern light, skylight, or other erection placed on the flat or roof thereof, shall be externally covered with slates, tiles, metal, or other incombustible materials, except the doors, door frames, windows, and window frames of such dormers, turrets, lantern lights, skylights, or other erections:
2. The plane of the surface of the roof of a warehouse or other building used either wholly or in part for purposes of trade or manufacture, shall not incline from the external or party walls upwards at a greater angle than forty-seven degrees with the horizon.

XX. The following rules shall be observed as to chimnies and flues: Rules as to chimnies and flues.

1. Chimnies built on corbels of brick, stone, or other incombustible materials may be introduced above the level of the ceiling of the ground story if the work so corbelled out does not project from the wall more than the thickness of the wall, but all other chimnies shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built:
2. Chimnies and flues having proper doors of not less than six inches square may be constructed at any angle, but in every other chimney or flue the angles shall be constructed of an obtuseness of not less than one hundred and thirty degrees, and shall be properly rounded:
3. An arch of brick or stone, or a bar of wrought iron, must be built over the opening of every chimney to support the breast thereof, and if the breast projects more than four and a half inches from the face of the wall, and the jamb on either side is of less width than seventeen and a half inches, the abutments must be tied in by an iron bar or bars turned up and down at the ends and built into the jambs for at least eight and a half inches on each side:
4. The inside of every flue, and the back or outside, unless forming part of the outer face of an external wall, must be rendered, pargeted, or lined with fireproof piping:
5. The jambs of every chimney must at the least be eight and a half inches wide on each side of the opening thereof:
6. The breast of every chimney, and the front, withe, partition, and back of every flue, must at the least be four inches in thickness:

7. The back of every chimney opening, from the hearth up to the height of twelve inches above the mantel, must at the least be eight and a half inches thick if in a party wall, or four and a half inches thick if not in a party wall:
8. The thickness of the upper side of every flue, when its course makes with the horizon an angle of less than forty-five degrees, must be at the least eight and a half inches:
9. Every chimney shaft shall be carried up in brick or stone work all round, at the least four inches thick, to a height of not less than three feet above the roof, flat, or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat, or gutter:
10. The brickwork or stonework of any chimney shaft, excepting that of the furnace of any steam engine, brewery, distillery, or manufactory, shall not be built higher above the roof, flat, or gutter adjoining thereto, measured from the highest point in the line of junction with such roof, flat, or gutter, than a height equal to six times the least width of such chimney shaft at the level of such highest point in the line of junction, unless such chimney shaft is built with and bonded to another chimney shaft not in the same line with the first, or otherwise rendered secure:
11. There shall be laid, level with the floor of every story, before the opening of every chimney, a slab of stone, slate, or other incombustible substance, at the least twelve inches longer than the width of such opening, and at the least eighteen inches wide in front of the breast thereof:
12. On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers; but on the lowest floor it may be bedded on the solid ground:
13. The hearth or slab of every chimney shall be bedded wholly on brick, stone, or other incombustible substance, and shall be solid for a thickness of seven inches at the least beneath the upper surface of such hearth or slab:
14. No flue shall be built against any party structure (*a*), unless a withe is properly secured thereto, at the least four inches in thickness:
15. No chimney breast or shaft built with or in any party wall shall be cut away unless the district surveyor cer-

(*a*) See definition of party structure, sect. 3, *ante*.

tifies that it can be done without injuriously affecting the stability of any building:

16. No chimney shaft, jamb, breast, or flue shall be cut into except for the purpose of repair, or doing some one or more of the following things:
    - Of letting in or removing or altering flues, pipes, or funnels for the conveyance of smoke, hot air, or steam, or of letting in, removing, or altering smoke jacks:
    - Of forming openings for soot doors, such openings to be fitted with a close iron door and frame:
    - Of making openings for the insertion of ventilating valves, subject to the following restriction, that no opening shall be made nearer than twelve inches to any timber or combustible substance:

17. No timber or woodwork shall be placed,
    - In any wall or chimney breast nearer than twelve inches to the inside of any flue or chimney opening;
    - Under any chimney opening within eighteen inches from the upper surface of the hearth of such chimney opening:
    - Within two inches from the face of the brickwork or stonework about any chimney or flue where the substance of such brickwork or stonework is less than eight and a half inches thick, unless the face of such brickwork or stonework is rendered;

    And no wooden plugs shall be driven nearer than six inches to the inside of any flue or chimney opening, nor any iron holdfast or other iron fastening nearer than two inches thereto.

Rules as to close fires and pipes for conveying vapour, &c.

XXI. The following rules shall be observed as to close fires, and pipes for conveying heated vapour or water; that is to say,

1. The floor under every oven or stove used for the purpose of trade or manufacture, and the floor around the same for a space of eighteen inches, shall be formed of materials of an incombustible and non-conducting nature:
2. No pipe for conveying smoke, heated air, steam, or hot water shall be fixed against any building on the face next to any street, alley, mews, or public way:
3. No pipe for conveying heated air or steam shall be fixed nearer than six inches to any combustible materials:
4. No pipe for conveying hot water shall be placed nearer than three inches to any combustible materials:
5. No pipe for conveying smoke or other products of combustion shall be fixed nearer than nine inches to any combustible material:

And if any person fails in complying with the rules of this section he shall for each offence incur a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*b*).

Rules as to accesses and stairs in certain buildings.

XXII. The following rules shall be observed with respect to accesses and stairs:

In every public building (*c*), and in every other building containing more than one hundred and twenty-five thousand cubic feet, and used as a dwelling house for separate families, the floors of the lobbies, corridors, passages, and landings, and also the flights of stairs, shall be of stone or other fire-proof material, and carried by supports of a fire-proof material.

Rules as to habitable rooms.

XXIII. The following rules shall be observed with respect to habitable rooms in any building; that is to say,

1. Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars and underground rooms, shall be in every part at the least seven feet in height from the floor to the ceiling:
2. Every habitable room hereafter constructed in the roof of every building shall be at the least seven feet in height from the floor to the ceiling throughout not less than one half the area of such room:
3. Cellars and underground rooms shall be constructed in manner directed by the said Act for the better local management of the metropolis (*d*):

And whosoever knowingly suffers any room that is not constructed in conformity with this section to be inhabited shall, in addition to any other liabilities he may be subject to under this Act, incur a penalty not exceeding 20*s.* for every day during which such room is inhabited (*e*); and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

As to party arches over public ways.

XXIV. Every party arch, and every arch or floor over any public way, or any passage leading to premises in other occupation, shall be formed of brick, stone, or other incombustible materials: If an arch of brick or stone is used, it shall, in cases where its span does not exceed nine feet, be of the thick-

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(*b*) As to recovery of penalties, see sect. 103, and as to their application, sect. 104.

(*c*) See sect. 3, *ante*.

(*d*) See provisions as to underground rooms and cellars, 18 & 19 Vict. c. 120, s. 103, and City of London Sewers Act, 11 & 12 Vict. c. 163, s. 11, *et seq*.

(*e*) As to recovery of penalties, see sect. 103; and see sect. 62 of 25 & 26 Vict. c. 102, *ante*, p. 288. See as to conditions to construction of arches and cellars under street, 18 & 19 Vict. c. 120, s. 101; and see sect. 125 of City of London Sewers Act, 11 & 12 Vict. c. 163.

ness of four and a half inches at the least, but when its span exceeds nine feet, be of the thickness of eight and a half inches at the least: If an arch or floor of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor.

As to arches under public ways.

XXV. Every arch under any public way shall be formed of brick, stone, or other incombustible materials: if an arch of brick or stone is used, it shall, in cases where its span does not exceed ten feet, be of the thickness of eight and a half inches at the least; where its span does not exceed fifteen feet, it shall be of the thickness of thirteen inches at least; and where its span exceeds fifteen feet, it shall be of such thickness as may be approved by the district surveyor: if an arch or other construction of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor.

Rules as to projections (*f*).

XXVI. The following rules shall be observed as to projections:—

1. Every coping, cornice, facia, window dressing, portico, balcony, verandah, balustrade, and architectural projection, or decoration whatsoever, and also the eaves or cornices to any overhanging roof, except the cornices and dressings to the window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant at least fifteen feet from any other building, and from the ground of any adjoining owner, shall, unless the metropolitan board otherwise permit, be of brick, tile, stone, artificial stone, slate, cement, or other fire-proof material.
2. In streets or alleys of a less width than thirty feet, any shop front may project beyond the external wall of the building to which it belongs for five inches and no more, and any cornice of any such shop front may project thirteen inches and no more; and in any street or alley of a width greater than thirty feet, any shop front may project ten inches and no more, and the cornice may project for eighteen inches from the external walls, but no more.

(*f*) Compare as to buildings projecting beyond the regular line sect. 143 of Metropolis Local Management Act, (now repealed,) note (*g*), p. 103, *ante*, and s. 75 of 25 & 26 Vict. c. 102, p. 301, *ante*. See as to projections under the first-mentioned Act, sects. 119, 120, and sect. 74, of 25 & 26 Vict. c. 102. And see 57 Geo. 3, c. 29, s. 72, *post*. See also City Sewers Act, 11 & 12 Vict. c. 163, ss. 154, 186, 188. The Building Act does not take away the power of justices to adjudicate on a complaint under 57 Geo. 3, c. 29, in case of encroachments on public highways by projections from buildings; *R.* v. *Ingham*, 17 Q. B. 884.

3. No part of the woodwork of any shop front shall be fixed nearer than four and a half inches from the line of junction of any adjoining premises, unless a pier or corbel of stone, brick, or other fire-proof material, four and a half inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof.
4. The roof, flat, or gutter of every building, and every balcony, verandah, shop front, or other projection, must be so arranged and constructed, and so supplied with gutters and pipes, as to prevent the water therefrom from dropping upon or running over any public way.
5. Except in so far as is permitted by this section in the case of shop fronts, and with the exception of water pipes and their appurtenances, copings, cornices, facias, window dressings, and other like architectural decorations, no projection from any building shall extend beyond the general line of fronts in any street (*f*), except with the permission of the metropolitan board of works hereinafter mentioned (*g*).

Rules as to the separation of buildings, and limitation of their areas.

XXVII. The following rules shall be observed as to the separation of buildings, and limitation of their areas:—

1. Every building shall be separated by external or party walls from any adjoining building:
2. Separate sets of chambers or rooms tenanted by different persons shall, if contained in a building exceeding three thousand six hundred square feet in area, be deemed to be separate buildings, and be divided accordingly, so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fire-proof floors:
3. If any building in one occupation is divided into two or more tenements, each having a separate entrance and staircase, or a separate entrance from without, every such tenement shall be deemed to be a separate building for the purposes of this Act:
4. Every warehouse or other building used either wholly or in part for the purposes of trade or manufacture, containing more than two hundred and sixteen thousand cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall

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(*f*) It is a question of fact for the magistrate whether the locality in question is or is not a street. *Newman* v. *Baker*, 8 C. B. (N. S.), 200.

(*g*) Therefore balconies, verandahs, balustrades, and the like architectural projections require the permission of that board for their construction.

not exceed the above-mentioned number of cubic feet (*h*).

XXVIII. The following rules shall be observed as to uniting buildings:— Rules as to uniting buildings.

1. No buildings shall be united unless they are wholly in the same occupation:
2. No buildings shall be united, if when so united they will, considered as one building only, be in contravention of any of the provisions of this Act:
3. No opening shall be made in any party wall dividing buildings, which, if taken together, would contain more than two hundred and sixteen thousand cubic feet, except under the following conditions:
   Such opening shall not exceed in width seven feet or in height eight feet:
   Such opening shall have the floor, jambs, and head formed of brick, stone, or iron, and be closed by two wrought-iron doors, each one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames, without woodwork of any kind:
4. Whenever any buildings which have been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.

XXIX. Every building used or intended to be used as a dwelling house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear or on the side thereof an open space exclusively belonging thereto of the extent at least of one hundred square feet. As to open spaces near dwelling houses.

XXX. Notwithstanding anything herein contained, every public building (*i*), including the walls, roofs, floors, galleries, and staircases, shall be constructed in such manner as may be approved by the district surveyor, or in the event of disagreement (*k*) may be determined by the metropolitan board; and save in so far as respects the rules of construction, every public building shall throughout this Act be deemed to Construction of public buildings.

(*h*) See the amending Act, 18 & 14 Vict. c. 52, *post*, providing that these rules shall not apply to buildings to be used for the manufacture of machinery and boilers of steam vessels, subject to certain conditions in the proviso.

(*i*) See sect. 3, *ante*.

(*k*) This provision casts upon the board the duty of directing how the works shall be executed. By a general rule of the board, the question must be brought before them by a memorial, setting forth the facts of the case, accompanied by plans and explanations; and the parties appear before the board, and, if deemed necessary, with witnesses.

be included in the term building, and be subject to all the provisions of this Act, in the same manner as if it were a building erected for a purpose other than a public purpose.

District Surveyors.

Buildings to be supervised by district surveyors.

XXXI. With the exemptions hereinbefore mentioned (*z*), every building, and every work done to, in, or upon any building, shall be subject to the supervision of the district surveyor appointed to the district in which the building is situate.

Power to metropolitan board of works established under 18 & 19 Vict. c. 120.

XXXII. The following things may be done by the metropolitan board of works established by the said Act for the better local management of the metropolis, by order, at their discretion; that is to say,

1. They may alter the limits of any district, or unite any two or more districts together, and in any such case place such altered district under the supervision of any existing or of any future district surveyor, with power from time to time to alter any district so made, and do all such matters and things as are necessary for carrying into effect the power hereby given (*a*).
2. They may dismiss any existing district surveyor, with the consent of one of Her Majesty's principal secretaries of state; they may suspend any such surveyor as last aforesaid; they may dismiss or suspend any future district surveyor; and in case of any suspension or during any vacancy they may appoint a temporary substitute:
3. Whenever any vacancy occurs in the office of any existing or future district surveyor, they may appoint another qualified (*b*) person in his place:
4. They may pay such amount of compensation as they think fit to any district surveyor who may be deprived of his office, in pursuance of the power hereby given of altering the limits of districts:

But subject to the provisions herein contained, the several places which at the time when this Act comes into operation are constituted districts under an Act passed in the eighth year of the reign of Her present Majesty, chapter eighty-four,

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(*z*) See exemptions, sect. 6, *ante*. By sect. 9, every work done for any purpose, except that of necessary repair, not affecting the construction of any external or party wall in, to, or upon, any old building, or in, to, or upon any new building after the roof has been covered in, is made subject to the regulations of this Act.

(*a*) Numerous alterations of districts have been made by the metropolitan board under this provision. See annual reports of board presented to parliament.

(*b*) As to qualification of district surveyors, see next section.

and intituled "An Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood," for the purposes of that Act, shall continue to be districts for the purposes of this Act, and the several persons who at the time when this Act comes into operation are district surveyors under the provisions of the said Act shall continue to be district surveyors under this Act.

Examination by Institute of British Architects.

XXXIII. The Institute of British Architects may from time to time cause to be examined, by such persons and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor, and shall grant certificates of competency to the candidates found deserving of the same; and no person who has not already filled the office of district surveyor, or has not already obtained a certificate of competency in pursuance of the said Act of the eighth year of the reign of Her present Majesty, chapter eighty-four (*c*) shall be qualified to be appointed to that office, unless he has received a certificate of competency from the said Institute of British Architects, or has been examined in such other manner as the said metropolitan board may direct, and been found competent in such examination.

District surveyor to have and maintain an office.

XXXIV. Every district surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the metropolitan board of works.

District surveyor may appoint deputy, with consent.

XXXV. If any district surveyor is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the metropolitan board of works, appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them.

Assistant surveyor may be appointed on emergency.

XXXVI. If at any time it appears to the metropolitan board of works that, on account of the pressure of business in any district, or any other account, the surveyor of that district cannot discharge his duties promptly and efficiently, then such board may direct any other district surveyor to assist the surveyor of such district in the performance of his duties, or appoint some other person to give such assistance, and such assistant surveyor shall be entitled to receive all fees payable in respect of the services performed by him.

(*c*) See sect. 66 of former Building Act, 7 & 8 Vict. c. 84, as to examination and certificates of qualification of surveyors of metropolitan buildings.

District surveyor not to act in case of works under his professional superintendence.

XXXVII. If any building is executed, or any work done to, in, or upon any building, by or under the superintendence of any district surveyor acting professionally, or on his own private account, it shall not be lawful for such surveyor to survey any such building for the purpose of this Act, or to act as district surveyor in respect thereof, or in any matter connected therewith, but it shall be his duty to give notice thereof to the said metropolitan board, who shall then appoint some other district surveyor to act in respect of such matter.

Notices to District Surveyors.

Notices to be given to district surveyor by builder (*a*).

XXXVIII. Two days before the following acts or event, that is to say,—

Two days before any building, or any work to, in, or upon any building, is commenced, and also, if the progress of any such building or work is, after the commencement thereof, suspended for any period exceeding three months, two days before such building or work is resumed, and also if during the progress of any such building or work the builder employed thereon is changed, then two days before any new builder enters upon the continuance of such building or work,

It shall be the duty of the builder engaged in building or rebuilding such building, or in executing such work, or in continuing such building or work, to give to the district surveyor notice in writing, stating the situation, area, and height, and intended use of the building or buildings about to be commenced, or to, in, or upon which any work is to be done, and the number of such buildings if more than one, and also the particulars of any such proposed work, and stating also his own name and address, but any works to, in, or upon the same building that are in progress at the same time may be included in one notice.

District surveyor to cause rules of this Act to be observed.

XXXIX. Every district surveyor shall, upon the receipt of any such notice as aforesaid, and also upon any work affected by the rules of this Act, but in respect of which no notice has been given, being observed by or made known to him, and also from time to time during the progress of any works affected by the rules and directions of this Act, as often as may

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(*a*) See as to limitation of time for proceedings by district surveyor where the notice has not been given, sect. 105; as to notices to vestries and district boards before beginning to lay or dig foundations of new buildings, see 18 & 19 Vict. c. 120, s. 76, and 25 & 26 Vict. c. 102, s. 88, *ante*, and in case of buildings within the city of London, 11 & 12 Vict. c. 163, s. 63.

be necessary for securing the due observance of such rules, survey any building or work hereby placed under their supervision, and cause all the rules of this Act to be duly observed.

Notice to be evidence of intended works.

XL. Every notice given in pursuance of this Act shall be deemed, in any question relative to any building or work, to be *primâ facie* evidence as against such builder of the nature of the building or work proposed to be built or done.

Penalty on builders neglecting to give notice.

XLI. If any builder neglects to give notice in any of the cases aforesaid, or executes any works of which he is hereby required to give notice before giving the same, or having given due notice of any works, executes the same before the expiration of two days from the time of giving such notice, such builder shall for every such offence incur a penalty not exceeding 20*l.*, to be recovered before a justice of the peace (*b*).

District surveyor may enter and inspect buildings affected by this Act.

Penalty for refusal.

XLII. At all reasonable times during the progress of any building or work affected by this Act, it shall be lawful for the district surveyor to enter and inspect such building or work; and if any person refuses to admit such surveyor to inspect such building or work, or refuses or neglects to afford such surveyor all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding 20*l.*, to be recovered before a justice of the peace (*b*).

District surveyor may enter buildings to ascertain as to exempted buildings.

XLIII. The district surveyor may at all reasonable times enter any premises, with the exception of buildings hereinbefore exempted by name, for the purpose of ascertaining whether any buildings erected in such premises are in such a situation or possess such characteristics as are hereinbefore required in order to exempt them from the operation of this Act, and he may do all such things as are necessary for the above purpose; and if any person refuses to admit such surveyor to enter such premises or to inspect any such building, or neglects to afford to him all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding 20*l.*, to be recovered before a justice of the peace (*b*).

In case of emergency, works may be commenced

XLIV. If by reason of any emergency any act or work is required to be done immediately, or before notice can be given as aforesaid, then it shall be lawful to do the act or work so required to be done, upon condition that before the expira-

(*b*) As to recovery of penalties, see sect. 103.

without notice.

tion of twenty-four hours after such act or work has been begun, notice thereof is given to the district surveyor.

Proceedings by District Surveyors in case of Irregularity.

Notice by district surveyor in case of irregularity.

XLV. In the following cases, that is to say,—

If, in erecting any building or in doing any work to, in, or upon any building, anything is done contrary to any of the rules of this Act, or anything required by this Act is omitted to be done; or,

In cases where due notice has not been given,—

If the district surveyor, on surveying or inspecting any building or work, finds that the same is so far advanced that he cannot ascertain whether anything has been done contrary to the rules of this Act, or whether anything required by the rules of this Act has been omitted to be done;

In every such case the district surveyor shall give to the builder engaged in erecting such building, or in doing such work, notice in writing, requiring such builder, within forty-eight hours from the date of such notice, to cause anything done contrary to the rules of this Act to be amended, or to do anything required to be done by this Act, but which has been omitted to be done, or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be to a sufficient extent cut into, laid open, or pulled down.

On non-compliance with notice, justice to summon builder and make order to comply with requisition.

XLVI. If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of forty-eight hours, the district surveyor may cause complaint of such noncompliance to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence, upon due proof of the service of such summons, it appears to such justice that the requisitions made by such notice or any of them are authorized by this Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice, or any of such requisitions that may in his opinion be authorized by this Act, within a time to be named in such order.

Penalty on noncompliance with order of justice.

XLVII. If such order is not complied with, the builder on whom it is made shall incur a penalty not exceeding 20*l.* a day, to be recovered before a justice of the peace, during every day of the continuance of such noncompliance, and in addition thereto the district surveyor may, if he thinks fit, proceed

with a sufficient number of workmen to enter upon the premises, and do all such things as may be necessary for enforcing the requisitions of such notice, and for bringing any building or work into conformity with the rules of this Act, and all expenses incurred by him in so doing and in any such proceedings as aforesaid may be recovered from the builder on whom such order was made, in a summary manner, before a justice of the peace, or may be recovered from the owner of the premises in the same manner in which expenses incurred by the commissioners hereinafter named in respect of dangerous buildings are hereinafter directed to be recovered from any owner (*f*); and if the owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the district surveyor shall have the same power of taking and selling the building in respect of which the order is made, and of applying the proceeds, as is thereby given to the commissioners.

Penalty on workmen, &c. doing anything contrary to rules of Act

XLVIII. If any workman, labourer, servant, or other person employed in or about any building, wilfully, and without the privity or consent of the person causing such work to be done, does anything in or about such building contrary to the rules of this Act, he shall for each such offence incur a penalty not exceeding 50*s*. (*g*)

Fees of District Surveyors.

Payments to district surveyors in respect of matters in first part of second schedule (*h*).

XLIX. There shall be paid to the district surveyors, in respect of the several matters specified in the first part of the second schedule hereto, the fees therein specified, or such other fees, not exceeding the amount therein specified, as may from time to time be directed by the metropolitan board of works; but one fee only shall be chargeable with respect to any such works done in, to, or upon any building as are in pursuance of the provisions hereinbefore contained included in one notice; and if in consequence of any reduction being made by the said metropolitan board in the amount of the said scheduled fees the income of any existing district surveyor is diminished, the metropolitan board shall grant to him compensation in respect of such diminution.

Metropolitan board may appoint

L. If any special service is required to be performed by the district surveyor under the first part of this Act, for which no

(*f*) See sects. 73, 74, and 97.
(*g*) See sect. 103.
(*h*) See as to construction of sect. 79 of former Building Act, 7 & 8 Vict. c. 84, subjecting surveyor, &c. demanding, or wilfully receiving higher fees than he was entitled to, *R.* v. *Badger*, 6 El. & El. 137. See now powers of the metropolitan board under sect. 54, *post*, in case of unauthorized fees.

special fees for services not provided for (*i*).

fee is specified in the said schedule, the metropolitan board of works may order such fee to be paid for such service as they think fit, and the district surveyor shall have the same remedy for recovering such special fee as if the same were expressly named in the said schedule.

Periods when surveyors entitled to fees.

LI. At the expiration of the following periods, that is to say,—

Of one month after the roof of any building surveyed by any district surveyor under this Act has been covered in,

Of fourteen days after the completion of any such work as is by this Act placed under the supervision of the district surveyor,

Of fourteen days after any special service in respect of any building has been performed,

The district surveyor shall be entitled to receive the amount of fees due to him from the builder employed in erecting such building, or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor, or from the owner (*k*) or occupier of the building so erected or in respect of which such work has been done or service performed; and if any such builder, owner, or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the peace (*l*), upon its being shown to the satisfaction of such justice that a proper bill specifying the amount of such fees was delivered to such builder, owner, or occupier, or sent to him in a registered letter addressed to his last known residence.

Returns by District Surveyors.

District surveyor to make monthly returns to metropolitan

LII. Every district surveyor shall, within seven days after the first day of every month, make a return to the metropolitan board of works, in such manner as they may appoint, of all notices and complaints received by him relative to the business of his district, and the results thereof, and of all matters brought by him before any justice of the peace,

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(*i*) By a general rule of the metropolitan board of works the following fees may be demanded by any district surveyor who shall perform any of the following special services required to be performed under the first part of the Metropolitan Buildings Act, 1855, for which no fee is specified in the first part of the second schedule to the Act, viz.:—

	£	s.	d.
For the supervision of furnaces, &c. having shafts: For every furnace and chimney shaft belonging thereto not exceeding 75 feet in height ..	1	10	0
Not exceeding 100 feet ..	2	0	0
For every 10 feet in addition up to 150 feet	0	2	6
For every 10 feet in addition above 150 feet	0	5	0

(*k*) See definition of owner, sect. 3. Ground landlord not an *owner* within this section and sect. 3. *Evelyn* v. *Whichcord*, 27 L. J. (N. S.) M. C. Q. B. 211.

(*l*) See sect. 103.

and of all the several works supervised and special services performed by him in the exercise of his office within the previous month, and of all fees charged or received in respect thereof, and specify in such return the description and locality of every building built, rebuilt, enlarged, or altered, or on which any work has been done under his supervision, with the particular nature of every work in respect of which any fee has been charged or received. Board of works.

LIII. Every such return shall be signed by such surveyor, and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects agreeably to this Act, according to the best of his knowledge and belief, and that they have been duly surveyed by him. Return duly signed to be a certificate that works are agreeable to Act.

LIV. The officer hereinafter mentioned as the superintending architect of metropolitan buildings, or such other officer as the metropolitan board of works appoint, shall from time to time examine the said monthly returns made by the district surveyors; and in case any fees therein specified appear to such officer to be unauthorized by this Act, or to exceed in amount the rates hereby made payable, or in case any such account appears to be in any respect fraudulent or untrue, he shall make his report in writing to that effect to the metropolitan board of works, who shall thereupon take such steps in the matter as they deem expedient. Superintending architect to audit accounts of fees charged by district surveyors, and to report in case of excess.

Powers of Metropolitan Board of Works.

LV. The metropolitan board of works may, by order, made with the consent of Her Majesty in council, alter, in such manner as they may think fit, the rules for the regulation of the thickness of walls contained in the first schedule hereto. Power for metropolitan board of works to modify rules.

LVI. Whenever any builder is desirous of erecting any iron building, or any other building to which the rules of this Act are inapplicable (*a*), he shall make an application to the metropolitan board of works, stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said board; and the latter, if satisfied with such plan and particulars, Buildings to which rules of Act are inapplicable.

(*a*) By a general rule of the metropolitan board of works all builders or others who may be desirous of erecting any chimney-shaft of a steam-engine, brewery, distillery, or manufactory, are required, before commencing any such building, to make an application to the board requesting their approval thereof, setting out a plan of the proposed building, and such other necessary particulars as may be required by the board.

shall signify their approval of the same, and thereupon such building may be constructed according to such plan and particulars; but it shall not be lawful for such board to authorize any warehouse or other building used either wholly or in part for the purposes of trade or manufacture to be erected of greater dimensions than two hundred and sixteen thousand cubic feet, unless it is divided by party walls as hereinbefore required.

Power of metropolitan board to make general rules.

LVII. The said metropolitan board may, for the purpose of regulating the proceedings of such applicants as aforesaid, from time to time issue such general rules as to the time and manner of making such applications, as to the plans to be presented, as to the expenses to be incurred, and as to any other matter or thing connected therewith, as they may think fit.

Approval of board how signified.

LVIII. The approval by the metropolitan board of works of any plans or particulars, in pursuance of the foregoing provisions, shall be signified by writing under the hand of the superintending architect of metropolitan buildings, and countersigned by the chairman of such board, or by any other officer appointed by the board.

Board to issue forms of notices.

LIX. The said metropolitan board may from time to time prepare or sanction forms of the various notices required by this Act, and may from time to time make such alterations therein as they deem requisite; and they shall cause every such form to be sealed with the seal of the board, or marked with some other distinguishing mark; and any notice made in a form sanctioned by the board shall in all proceedings be held sufficient in law.

Expenses of orders to be borne by builders.

LX. All expenses incurred in and about the obtaining such approval of the metropolitan board of works as aforesaid shall be paid by the builder to the said superintending architect, or to such other person as the said board may appoint, and in default of payment may be recovered in a summary manner (*b*).

District surveyor to see plans carried into execution.

LXI. A copy of any plans and particulars, approved by the metropolitan board of works, shall be furnished to the surveyor within whose district the building to which such plans and particulars relate is situate, and thereupon it shall be the duty of such district surveyor to ascertain that the same is built in accordance with the said plans and particulars.

(*b*) See sect. 103.

LXII. The metropolitan board of works may, for the purpose of aiding in the execution of this Act, appoint some fit person, to be called the "superintending architect of metropolitan buildings," together with such number of clerks as they think fit; such architect and clerks shall be removable by the said metropolitan board, and shall perform such duties as the said board direct; but it shall not be lawful for any superintending architect to practise as an architect or to follow any other occupation. Power to metropolitan board to appoint superintending architect and clerks.

LXIII. If the superintending architect is prevented by illness, infirmity, or any other unavoidable circumstances from attending to the duties of his office, he may, with the consent of the metropolitan board of works, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them. Superintending architect may appoint deputy, with consent.

LXIV. There shall be paid to such superintending architect and clerks such salaries as the said metropolitan board may from time to time direct. Salaries to architect and clerks.

Expenses.

LXV. The said metropolitan board may at any time hereafter, by order, cause such fixed salary as they may determine to be paid to any district surveyor by way of remuneration instead of fees, provided the amount of such remuneration be not less than the amount of the average of the fees for the last three years; and thereupon such surveyor shall pay all fees received by him under this Act into the hands of the said superintending architect. Power of metropolitan board to pay salaries.

LXVI. All monies received by the superintending architect in pursuance of this Act shall be accounted for and paid by him into the hands of the treasurer of the said metropolitan board, at such time and in such manner as the said board may direct. Monies received by superintending architect to be paid to the metropolitan board.

LXVII. The said metropolitan board may at any time hereafter provide, either wholly or partially, for the payment of salaries to the district surveyors, or to any of them, out of the rates (*c*) leviable by such board, in pursuance of the said Act for the better local management of the metropolis, and may thereupon abolish or reduce any fees hereby made payable to the district surveyors. Metropolitan board may pay salaries out of rates.

(*c*) See sect. 170 of 18 & 19 Vict. c. 120, section 5 of 25 & 26 Vict. c. 102.

Expenses, how borne.

LXVIII. All expenses of carrying into execution this Act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said metropolitan board in the execution of the said Act for the better local management of the metropolis, and shall be raised and paid accordingly (*d*).

PART II. *Dangerous structures.*

PART II.

DANGEROUS STRUCTURES.

Survey to be made of dangerous structures. 8 Vict. c. 84, s. 40.

LXIX. Whenever it is made known to the commissioners hereinafter named that any structure (including in such expression any building, wall, or other structure, and anything affixed to or projecting from any building, wall, or other structure), is in a dangerous state, such commissioners shall require a survey of such structure to be made by the district surveyor, or by some other competent surveyor, and it shall also be the duty of the district surveyor to make known to the said commissioners any information he may receive with respect to any structure being in such state as aforesaid.

Definition of "Commissioners."

LXX. In cases where any such structure is situate within the city of London or the liberties thereof, hereinafter included under the expression "the city of London," the expression "the commissioners" shall mean "the commissioners of sewers of the city of London;" but when such structure is situate elsewhere it shall mean "the commissioners of police of the metropolis," or such one of them as may be authorized by one of Her Majesty's principal secretaries of state to act in the matter of this Act.

Surveyor on completion of survey to give certificate.

LXXI. Upon the completion of his survey the surveyor employed shall certify to the said commissioners his opinion as to the state of any such structure as aforesaid.

Proceedings to be taken in respect of certificate.

LXXII. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof, but if it is to the effect that the same is in a dangerous state, the commissioners shall cause the same to be shored up, or otherwise secured, and a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner or occupier of such structure, requiring him forth-

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(*d*) See note to preceding section.

with to take down, secure, or repair the same, as the case requires.

On noncompliance with notice justice to summon owner, &c., and make order to comply with requisition.

LXXIII. If the owner or occupier to whom notice is given as last aforesaid fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the said commissioners may make complaint thereof before a justice of the peace; and it shall be lawful for such justice to order the owner, or on his default the occupier, of any such structure, to take down, repair, or otherwise secure, to the satisfaction of the surveyor who made such survey as aforesaid, or of such other surveyor as the said commissioners may appoint, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such justice; and in case the same is not taken down, repaired, or otherwise secured within the time so limited, the said commissioners may, with all convenient speed cause all or so much of such structure as is in a dangerous condition to be taken down, repaired, or otherwise secured, in such manner as may be requisite; and all expenses incurred by the said commissioners in respect of any dangerous structure by virtue of the second part of this Act shall be paid by the owner (*e*) of such structure, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

If owner cannot be found, commissioners may sell structure, giving the surplus to owner, &c.

LXXIV. If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said commissioners, after giving three months' notice of their intention to do so by posting a printed or written notice in a conspicuous place on the structure in respect of which or of part of which they have incurred expense, or on the land whereon it stands, may sell (*f*) such structure, and they

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(*e*) Persons who were seised in fee of a building used as a chapel which they had let on lease for a term of twenty years were held not to be liable to payment of these expenses, and that the lessee was the owner within the meaning of this enactment; *Mourilyan* v. *Labalmondiere*, 30 L. J. (N.S.) M.C. 95. See *Ex parte Overseers of Saffron Hill*, 18 Jur. 1104, under sect. 42 of the former Building Act, 7 & 8 Vict. c. 84. See as to necessary averments in an order of a magistrate for payment of expenses incurred by commissioners under this section, *Labalmondiere* v. *Prest*, 1 E. & B. 527; as to time of making complaint in respect of these expenses, *Labalmondiere* v. *Addison*, 1 E. & E. 41.

(*f*) By sect. 41 of the former Building Act, 7 & 8 Vict. c. 84, the lord mayor and aldermen or overseers were empowered to sell and dispose of such of the materials as they should judge necessary. It is probable that the present enactment gives no greater power, as it makes a distinction between the *structure* and the *land* whereon it stands. Expenses incurred by a tenant for life in reinstating ruinous structures held a charge on the property; *Re Davis's Estate and Crystal Palace and West End Railway Company*, 3 De G. & I. 144.

shall, after deducting from the proceeds of such sale the amount of all expenses (*g*) incurred by them, restore (*h*) the surplus (if any) to the owner.

Payments by or to the commissioners, how made.

LXXV. All payments hereby directed to be made by or to the commissioners shall, in the cases of payments in respect of any structure situate within the city of London, be made by or to the chamberlain of the city out of or to the consolidated rate made by the commissioners of sewers, and in the cases of payments in respect of any structure situate elsewhere within the limits of this Act, be made by or to the receiver of metropolitan police, in the same manner in which payments are made by or to such chamberlain and receiver respectively in the ordinary course of their business; but no commissioner or other officer shall be liable in respect of any loss that may be sustained by any person in consequence of the exercise by the said commissioners of the powers hereby given them, unless such loss happens through the wilful default of such commissioner or other officer.

Surplus, how to be applied if no demand made for it.

LXXVI. In cases where any surplus is hereby made payable to any owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Chancery, to be placed to his account there to the credit of the owner (describing him so far as the commissioners can), subject to the control of the court, and to be paid out to the owner on his applying by petition, and proving his title thereto.

Fees to district surveyor.

LXXVII. There shall be paid to the district surveyor, or to such other surveyor as aforesaid, in respect of his services under the second part of this Act, such fees, not exceeding the amounts specified in the second part of the second schedule hereto, as may from time to time be directed by the said metropolitan board.

Metropolitan board may appoint special fees for services not provided for.

LXXVIII. If any special service is required to be performed by the district surveyor, or by such other surveyor as aforesaid, under the second part of this Act, for which no fee is specified in the said schedule, the said metropolitan board may order such fee to be paid for such service as they think fit.

(*g*) See *Bradbee* v. *Christ's Hospital*, 4 Man. & Gr. 714.

(*h*) The 41st section of a former Building Act made the surplus payable *on demand*. See *Simpson* v. *Routh*, 2 B. & C. 682. *Philp* v. *Donati*, 2 Taunt. 62.

LXXIX. All fees paid to the district surveyor, or to such other surveyor as aforesaid, by virtue of the second part of this Act, shall be deemed to be expenses incurred by the said commissioners in the matter of the dangerous structure in respect of which such fees are paid, and shall be recoverable by them from the owner accordingly. Fees to be deemed part of expenses.

LXXX. In cases where a structure has been certified by a district surveyor, or such other surveyor as aforesaid, to be dangerous to its inmates, a justice of the peace may, if satisfied of the correctness of such certificate, upon the application of the said commissioners, by order under his hand direct any inmates of such structure to be removed therefrom by a constable or other peace officer, and if they have no other abode he may require them to be received into the workhouse established for the reception of the poor of the place in which such structure is situate. Justice of peace may cause inmates to be removed from dangerous structures.

LXXXI. Subject to the approval of one of Her Majesty's principal secretaries of state, the said commissioners may appoint such persons, at such salaries, and make such regulations as they think fit for carrying into execution the second part of this Act; and all expenses incurred by them, not hereby otherwise provided for, shall, in the case of expenses incurred by the said commissioners of police, be deemed to be expenses incurred by them in respect of the police force of which they are commissioners, and be payable accordingly; and all expenses incurred by the said commissioners of sewers shall be paid out of the said consolidated rate. Powers of commissioners to appoint officers.

PART III.

PART III. *Party Structures.*

PARTY STRUCTURES.

Preliminary.

LXXXII. In the construction of the following provisions relating to party structures, such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner. Definition of building owner and adjoining owner.

Rights of Building and Adjoining Owner.

Right of building owner (i).

LXXXIII. The building owner shall have the following rights in relation to party structures; that is to say,

(1.) A right to make good or repair any party structure that is defective or out of repair:

(2.) A right to pull down and rebuild any party structure that is so far defective or out of repair as to make it necessary or desirable to pull down the same:

(3.) A right to pull down any timber or other partition that divides any buildings, and is not conformable with the regulations of this Act, and to build instead a party wall conformable thereto:

(4.) In the case of buildings having rooms or stories the property of different owners intermixed, a right to pull down such of the said rooms or stories or any part part thereof as are not built in conformity with this Act, and to rebuild the same in conformity with this Act:

(5.) In the case of buildings connected by arches or communications over public ways or over passages belonging to other persons, a right to pull down such of the said buildings, arches, or communications, or any part thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act:

(6.) A right to raise any party structure permitted by this Act to be raised, or any external wall built against such party structure, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall:

(7.) A right to pull down any party structure that is of insufficient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof:

(8.) A right to cut into any party structure, upon condition of making good all damage occasioned to the adjoining premises by such operation:

(9.) A right to cut away any footing or any chimney breasts, jambs, or flues projecting from any party wall, in order

(i) See *Wheeler* v. *Gray*, 27 L. J. (N. S.) C. P. 267.

to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation:

(10.) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down:

(11.) A right to perform any other necessary works incident to the connection of party structure with the premises adjoining thereto:

But the above rights shall be subject to this qualification, that any building which has been erected previously to the time of this Act coming into operation shall be deemed to be conformable with the provisions of this Act if it is conformable with the provisions of an Act passed in the fourteenth year of His late Majesty King George the Third, chapter seventy-eight, or with the provisions of the said Act of the eighth year of Her present Majesty, chapter eighty-four.

Rights of adjoining owner.

LXXXIV. Whenever the building owner proposes to exercise any of the foregoing rights with respect to party structures, the adjoining owner may require the building owner to build on any such party structure certain chimney jambs, breasts, or flues, or certain piers or recesses, or any other like works for the convenience of such adjoining owner; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right; and any difference that arises between any building owner and adjoining owner in respect of the execution of such works as aforesaid shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined.

Rules as to exercise of rights by building an adjoining owners.

LXXXV. The following rules shall be observed with respect to the exercise by building owners and adjoining owners of their respective rights:—

(1.) No building owner shall, except with the consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous structures shall apply, exercise any right hereby given in respect of any party structure, unless he has given at the least three months' previous notice to the adjoining owner by delivering the same

to him personally, or by sending it by post in a registered letter addressed to such owner at his last known place of abode:

(2.) The notice so given shall be in writing or printed, and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced:

(3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner:

(4.) Upon the receipt of such notice the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled:

(5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence: it shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied with explanatory plans and drawings:

(6.) If either owner does not, within fourteen days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner:

(7.) In all cases not hereby specially provided for, where a difference arises between a building owner and adjoining owner in respect of any matter arising under this Act, unless both parties concur in the appointment of one surveyor, they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor or three surveyors, or any two of them, shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference; but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned:

(8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be conclusive, and shall not be questioned in any court, with this exception, that either of the parties to the difference may appeal therefrom to the county court

within fourteen days from the date of the delivery of any such award as aforesaid, and such county court may, subject as hereinafter mentioned, rescind or modify the award so given, in such manner as it thinks just:

(9.) If either party to the difference makes default in appointing a surveyor for ten days after notice has been given to him by the other party in manner aforesaid to make such appointment, the party giving the notice may make the appointment in the place of the party so making default:

(10.) The costs incurred in obtaining any such award as aforesaid shall be paid by such party as such one surveyor, or three surveyors, or any two of them, may determine:

(11.) If the appellant from any such award as aforesaid, on appearing before the county court, declares his unwillingness to have the matter decided by such court, and proves to the satisfaction of the judge of such court that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs, exceeding 50*l.*, and gives security, to be approved by such judge, duly to prosecute his appeal and to abide the event thereof, all proceedings in the county court shall thereupon be stayed; and it shall be lawful for such appellant to bring an action in one of Her Majesty's superior courts of law at Westminster against the other party to the difference; and the plaintiff in such action shall deliver to the defendants an issue or issues whereby the matters in difference between them may be tried, and the form of such issue or issues, in case of dispute, or in case of the non-appearance of the defendant, shall be settled by the court in which the action is brought; and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit.

(12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such superior court as aforesaid, and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court, or as near thereto as circumstances admit; and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Power for building owner to make entry on premises to effect works.

LXXXVI. Whenever any building owner has become entitled, in pursuance of this Act, to execute any work, it shall be lawful for him, his servants, agents, or workmen, at all usual times of working, to enter on any premises for the purpose of executing and to execute such work, removing any furniture, or doing any other thing that may be necessary, and if such premises are closed he or they may, accompanied by a constable or other officer of the peace, break open any doors in order to such entry; and any owner or other person that hinders or obstructs any workmen employed for any of the purposes aforesaid, or wilfully damages or injures the said work, shall incur for every such offence a penalty not exceeding 10*l.*, to be recovered before a justice of the peace.

Penalty on persons obstructing.

Security to be given by building owner, if required by adjoining owner.

LXXXVII. Any adjoining owner may, if he thinks fit, by notice in writing given by himself or his agent, require the building owner, before commencing any work which he may be authorized by this Act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the judge of the county court for the payment of all such costs and compensation in respect of such work as may be payable by such building owner.

Rules as to expenses in respect of party structure.

LXXXVIII. The following rules shall be observed as to expenses in respect of any party structure; (that is to say,)

As to expenses to be borne jointly by the building owner and adjoining owner:

(1.) If any party structure is defective or out of repair, the expense of making good or repairing the same shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure.

(2.) If any party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull down the same, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure.

(3.) If any timber or other partition dividing any building is pulled down, in exercise of the right hereinbefore vested in a building owner, and a party structure built instead thereof, the expense of building such party structure, and also of building any additional party structures that may be required by reason of such partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of

such party structure, and to the thickness required to the respective buildings parted thereby:

(4.) If any room or stories, or any part of rooms or stories, the property of different owners, and intermixed in any building, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such rooms or stories:

(5.) If any arches or communications, or any parts thereof, are pulled down, in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such arches or communications:

As to expenses to be borne by building owner;

(6.) If any party structure or external wall built against the same is raised, in pursuance of the power hereinbefore vested in any building owner, the expense of raising the same, and of making good all such damage, and of carrying up to the requisite height all such flues and chimnies as are hereinbefore required to be made good and carried up, shall be borne by the building owner.

(7.) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull down the same, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding the same, and of making good all such damage as is hereinbefore required to be made good, shall be borne by the building owner:

(8.) If any party structure is cut into by the building owner, the expense of cutting into the same, and of making good any damage hereinbefore required to be made good, shall be borne by such building owner:

(9.) If any footing, chimney breast, jambs, or floor is cut away, in pursuance of the powers hereinbefore vested in any building owner, the expense of such cutting away, and of making good any damage hereinbefore required to be made good, shall be borne by the building owner.

Account of expenses of works to be

LXXXIX. Within one month after the completion of any work which any building owner is by this Act authorized or required to execute, and the expense of which is in whole or

delivered to adjoining owner within one month.

part to be borne by an adjoining owner, such building owner shall deliver to the adjoining owner an account in writing of the expense of the work, specifying any deduction to which such adjoining owner or other person may be entitled in respect of old materials, or in other respects; and every such work as aforesaid shall be estimated and valued at fair average rates and prices, according to the nature of the work and the locality, and the market price of materials and labour at the time.

Adjoining owner may appeal against account.

XC. At any time within one month after the delivery of such account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the party delivering the same by notice in writing given by himself or his agent, and specifying his objections thereto; and upon such notice having been given a difference shall be deemed to have arisen between the parties, and such difference shall be determined in manner hereinbefore provided (*a*) for the determination of differences between building and adjoining owners.

Building owner may recover, if no appeal made.

XCI. If within such period of one month as aforesaid the party receiving such account does not declare in manner aforesaid his dissatisfaction therewith, he shall be deemed to have accepted the same, and shall pay the same, on demand, to the party delivering the account, and if he fails to do so, the amount so due may be recovered as a debt.

Penalty on delay of payment by adjoining owner.

XCII. Where the adjoining owner is liable to contribute to the expenses of building any party structure, until such contribution is paid the building owner at whose expense the same was built shall stand possessed of the sole property in such structure.

As to expenses incurred on requisition of adjoining owner.

XCIII. Where any building owner has incurred any expenses on the requisition of an adjoining owner, the adjoining owner making such requisition shall be liable for all such expenses, and in default of payment the same may be recovered from him as a debt.

Penalty on building owner failing to execute required works.

XCIV. Where any building owner is, by the third part of this Act, liable to make good any damage he may occasion to the property of the adjoining owner by any works authorized to be executed by him, or to do any other thing upon condition of doing which his right to execute such works is hereby limited to arise, and such building owner fails within a reasonable time to make good such damage or to do such thing, he shall incur a penalty, to be recovered before a justice of the

(*a*) See s. 85, *ante*.

peace, not exceeding 20*l.* for each day during which such failure continues.

Consent how given on behalf of persons under disability.

XCV. Where, in pursuance of this Act, any consent is required to be given, any notice to be served, or any other thing to be done by, on, or to any owner under disability, such consent may be given, such notice may be served, and such thing may be done by, on, or to the following persons, on behalf of such persons under disability; that is to say,

By, on, or to a husband, on behalf of his wife:

By, on, or to a trustee, on behalf of his *cestuique* trust:

By, on, or to a guardian or committee, on behalf of an infant, idiot, or lunatic.

Consent how given on behalf of persons not to be found.

XCVI. Where any consent is required to be given, or any other thing to be done by any owner, in pursuance of this Act, if there is no owner capable of giving such consent, or of doing such thing, and no person empowered by this Act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered cannot be found, the judge of the county court shall have power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given; and such judge shall have power to dispense with the service of any notice which would otherwise be required to be served.

PART IV.

Part IV. *Miscellaneous provisions.*

Miscellaneous Provisions.

Payment of expenses by owners.

XCVII. Where it is hereby declared that expenses are to be borne by the owner of any premises (including in the term "owner" the adjoining and building owner respectively), the following rules shall be observed with respect to the payment of such expenses:

(1.) The owner immediately entitled in possession to such premises, or the occupier thereof, shall in the first instance pay such expenses, with this limitation, that no occupier shall be liable to pay any sum exceeding in

amount the rent due or that will thereafter accrue due from him in respect of such premises during the period of his occupancy:

(2.) If there are more owners than one, every owner shall be liable to contribute to such expenses in proportion to his interest:

(3.) If any difference arises as to the amount of contribution, such difference shall be decided by arbitration, to be conducted in manner directed by the Companies Clauses Consolidation Act, 1845; and for that purpose the clauses of the said Act with respect to the settlement of disputes by arbitration shall be incorporated with this Act (*a*).

(4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided amongst the parties that can be found:

(5.) Any occupier of premises who has paid any expenses under this Act may deduct the amount so paid from any rent payable by him to any owner of the same premises; and any owner of premises who has paid more than his due proportion of any expenses may deduct the amount so overpaid from any rent that may be payable by him to any other owner of the same premises:

(6.) If default is made by any owner or occupier in payment of any expenses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or monies due from him by way of contribution or otherwise in pursuance of this Act, then, in addition to any other remedies hereby provided, such expenses and monies, if arising in respect of any matter within the provisions of the third part of this Act, may be recovered as a debt in due course of law, but if arising in respect of any other matter under this Act may be recovered in a summary manner.

Rules as to service of notices, summonses, and orders.

XCVIII. The following rules shall be observed with respect to the giving or service of any notice, summons, or order directed to be given or served under this Act in cases not hereinbefore provided for.

(1.) A notice, summons, or order may in all cases be served personally:

(2.) A notice, summons, or order may be served on any builder by leaving the same or sending it in a registered letter addressed to him at his place of address as stated by

(*a*) The sections of the Companies Clauses Act, 8 Vict. c. 16, relative to the settlement of disputes by arbitration, are the 128th and following to the 134th inclusive.

him to the district surveyor, or by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates:

(3.) A notice, summons, or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises, or with some inmate of his abode, or if there is no occupier by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates; and it shall not be necessary to name the owner or occupier of such premises; nevertheless, when the owner of any such premises and his residence, or that of his agent, are known to the party by whom or on whose behalf any notice, summons, or order is intended to be served, it shall be the duty of such party to send every such notice, summons, or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent:

(4.) A notice, summons, or order may be served on any district surveyor by leaving the same at his office.

As to things authorized to be done by a county court.

XCIX. Whenever anything is hereby authorized to be done by a county court it may be done as follows; that is to say, if such thing arises in respect of any structure or other subject matter situate within the city of London or the liberties thereof, by the sheriff's court established by a local Act passed in the eleventh year of the reign of Her Majesty, chapter seventy-one, intituled "An Act for the more easy Recovery of Small Debts and Demands within the City of London or the Liberties thereof," and if such thing arises in respect of any structure or other subject matter situate elsewhere, by the county court having jurisdiction within the district in which such structure or other subject matter is situate.

11 & 12 Vict. c. 71.

Manner of determining differences.

C. In cases where jurisdiction is hereby given to a county court, such court may from time to time make such order in respect of matters so brought before it as it may think fit, with power to settle the time and manner of executing any work, or of doing any other thing, and to put the parties to the case upon such terms as respects the execution of the work as it thinks fit: it shall also have power to award or refuse costs according to circumstances, and to settle the amount thereof.

Form of proceedings in county court.

CI. Proceedings in any county court in respect of any matter arising under this Act shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; and orders made by the judge of any such court may be enforced by execution, committal or otherwise,

in a similar manner to that in which the orders of such court are ordinarily enforced.

Appeal from decision of county court.

CII. If either party in any case over which jurisdiction is hereby given to a county court feels aggrieved with the decision of such court in respect of any point of law, or the admission or rejection of any evidence, he may appeal therefrom in the same manner and upon the same terms in and upon which he might have appealed from the decision of such court in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit: but no such appeal shall be allowed unless the value of the matter in difference between the parties exceeds 50*l.*; and the opinion of the judge before whom the case is tried as to such value shall be conclusive.

Recovery of penalties.

CIII. All penalties under this Act, and all fees, monies, costs, or expenses by this Act directed to be recovered in a summary manner, may be recovered in manner directed by an Act passed in the eleventh and twelfth years of the reign of Her paesent Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders;" and whenever anything is hereby authorized or required to be done by or before a justice of the peace it may be done as follows; that is to say, if such thing arises in respect of any building or wall situate within the city of London, by or before one or more justice or justices of the peace for the said city or by any metropolitan police magistrate, and if such thing arises in respect of any building or wall situate elsewhere within the limits of this Act, by or before any metropolitan police magistrate.

Application of penalties.

CIV. Any justice of the peace in any case over which jurisdiction is hereby given to him may make such order as to the costs of any proceedings of which he has cognizance as he thinks just; he may also direct the whole or any part of any penalty imposed by him under this Act to be applied in or towards payment of the costs of the proceedings; and subject to such direction, all penalties shall be paid into the hands of the treasurer of the said metropolitan board, to be applied in such manner as the said board thinks fit (*b*).

Provisions as to limitation of time when due notice has not been given.

CV. In cases where any building has been erected or work done without due notice being given to the district surveyor, the district surveyor may, at any time within one month after he has discovered that such building has been erected or work done, enter the premises for the purpose of seeing that the re-

(*b*) But *see Wray* v. *Ellis*, 28 L. J. (N. S.) M. C. 45, showing that the receiver of metropolitan police is entitled to half the penalty.

gulations of this Act have been complied with, and the time during which the district surveyor may take any proceeding, or do anything authorized or required by this Act to be done by him, in respect of such building or work, shall begin to run from the date of his discovering that such building has been erected or work done.

Power to appeal to superior courts.

CVI. In every case, except in respect of fees of a district surveyor, in which jurisdiction is hereinbefore given to a justice of the peace, if either party to any such case is dissatisfied with the determination of the justice so convicting, in respect of any point of law, or of the admission or rejection of any evidence, such party may, upon giving notice within seven days to the other party of his intention to appeal, appeal therefrom to any of the superior courts of common law at Westminster; subject to this restriction, that no such appeal shall be made by any district surveyor except with the consent of the justice before whom the case is tried, and that no such appeal shall be made by any other party to the case except upon giving such security for costs, and if the case requires it, in addition thereto, such undertaking in respect of desisting in the meantime from any works complained of, or in respect of any other matter or thing arising in the case, as the justice thinks fit.

Form of appeal.

CVII. Any appeal so made shall be in the form of a special case, to be agreed on by both parties, or, if the parties cannot agree, to be settled by the justice from whose decision the appeal is made; and such case shall be transmitted by the appellant to the rule department of the master's office in the court in which the appeal is to be brought, and be heard in manner provided by the practice of such court.

Notice of action (c).

CVIII. No writ or process shall be sued out against any district surveyor or other person for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing has been delivered to him, or left at his office or usual place of abode, stating the cause of action, and the name and place of abode, of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause

(c) See as to how entitled to notice of action as answering the description of "other person." *Wheeler* v. *Gray*, 27 L. J. (N. S.) C.P. 237.

of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder.

PART V.

Repeal of former Acts and temporary provisions.

PART V.

REPEAL OF FORMER ACTS AND TEMPORARY PROVISIONS.

Repeal.

Repeal of 7 & 8 Vict. c. 84, except ss. 54 to 63, and 9 & 10 Vict. c. 5.

CIX. From and after the commencement of this Act, the following Acts, that is to say, an Act passed in the eighth year of the reign of Her present Majesty, chapter eighty-four, and intituled an "An Act for regulating the Construction and the Use of Buildings in the Metropolis and its Neighbourhood," with the exception of the sections relating to dangerous and noxious businesses, and numbered respectively fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, and sixty-three (*c*), and an Act passed

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(*c*) The 54th section prohibits the erection of any buildings within a certain distance from any building in use for any of the following businesses; viz., manufacture of gunpowder, or of detonating powder, or of matches ignitable by friction or otherwise, or other substance liable to sudden explosion, inflammation, or ignition, or of vitriol, or of turpentine, or of naphtha, or of varnish, or of fireworks, or of painted table covers, and any other manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion; and it prohibits persons from establishing or newly carrying on any such business within a certain distance from the public way, &c., and imposes penalties. The 55th prohibits the erection of any building of the dwelling-house class within a prescribed distance from any building used for any of the following businesses; viz., bloodboiler, boneboiler, fellmonger, soap boiler, slaughterer of cattle, sheep, or horses, tallow-melter, tripeboiler, and any other like business offensive or noxious, and the establishment or newly carrying on of any such business within a certain distance from any public way or any building of the dwelling-house class, and imposes penalties. The 56th prescribes the mode of imposing penalties, and provides for a mitigation of penalties or a suspension of orders in certain cases. The 57th relates to appeals against convictions; the 58th authorizes a trial by jury at quarter sessions, and prescribes the course of proceeding; the 60th preserves common law and statutory remedies; the 61st provides for the removal of any offensive, noxious, or dangerous business, after memorial to the Queen in council and on payment of compensation; the 62nd relates to the mode of raising funds for payment of compensation; and the 63rd exempts from the operation of these provisions public gasworks and premises used for the distillation, &c. of spirits, under the survey of commissioners of excise.

in the ninth year of the reign of Her present Majesty, chapter five, and intituled "An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood," are throughout the limits of this Act and elsewhere hereby repealed, subject to the following provisions; that is to say,

1. That such repeal shall not affect any proceedings authorized to be taken by the said Acts or either of them in respect of any act, omission, penalty, matter, or thing, and pending before the official referees or any other tribunal at the time of the commencement of this Act:
2. That in cases where any act, omission, or thing has occurred previously to the time of the commencement of this Act, in respect of which, if this Act had not passed, proceedings might have been taken under the said Acts or either of them, then proceedings in respect of such act, omission, or thing may be had under this Act in manner following; that is to say, if the matter in question is anything relating to the rights of building and adjoining owners in respect of party structures, proceedings may be had in the county court, but if the matter in question relates to the recovery of any penalty or to any other thing, proceedings may be had before any justice of the peace:
3. That so much of the Act of the fourteenth year of King George the Third, chapter seventy-eight, as was excepted from the operation of the said Act of the eighth year of Her present Majesty, chapter eighty-four, (that is to say,) the sections numbered respectively seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six (*d*), shall continue in full force.

(*d*) The 74th section directs the churchwardens, &c., to fix stopblocks, at the charge of the parish, upon the mains and pipes belonging to waterworks, with plugs, and empowers them to fix marks or writing on the front of houses over against or near the places where stopblocks, plugs, &c. lie, and provides for the keeping of instruments or keys for opening stopblocks, &c. The 75th directs parishes to keep engines, leather pipes, ladders, &c., and imposes penalty on churchwardens, &c. making default. The 76th directs payment of certain rewards to the turncock of waterworks whose water first comes into a main or pipe at a fire, and to engine keepers bringing parish engines to help to extinguish a fire, which rewards may, in case of default, be levied by distress on churchwardens, &c. The 77th declares that no reward shall be payable without approbation of an alderman, common councillor, or justice, &c. The 78th provides for the reimbursement of churchwardens, &c. by the inhabitants or occupiers of rooms, and the tenants, &c. of houses, and it empowers the mayor, justices, &c. to award sums, and provides for the recovery of the sum awarded. The 80th relates to the number of engines, &c. for large parishes. The 81st

As to contracts made previously to passing of Act.

CX. Any contract made previously to the passing of this Act for the erection of a new building shall be carried into effect in the same manner as if this Act had been passed at the time of the making thereof, and the necessary deviations from the terms of such contract may be made accordingly; and if any dispute arises in respect of any loss sustained by any party to such contract by reason of such necessary deviation, such dispute shall be determined by the county court; and whenever any costs or expenses have been paid by any owner in pursuance of this Act, then as to any structure held under any lease or agreement made previously to the commencement of this Act it shall be lawful for such owner to recover the same from the person hitherto liable by law, or by such existing lease or contract, to maintain or repair the structure in respect of which such costs and expenses have been incurred.

Liabilities under contract between landlord and tenant not to be affected.

CXI. Nothing herein contained shall vary or affect the rights or liberties as between landlord and tenant under any contract between them.

As to iron buildings constructed before this Act comes into operation.

CXII. In cases where any iron building has been constructed or is in the progress of construction previously to the time at which this Act comes into operation, and doubts are entertained whether such building is permitted by law, any person interested in such building may make an application to the commissioners of works and buildings, to signify their approval of such building; and the commissioners of works and buildings, upon being satisfied of the stability of such building, may approve of the same, and upon such approval being given such building shall be deemed to have been constructed in manner permitted by law, and this section shall come into operation immediately after the passing of this Act.

Compensation to official re-

CXIII. The official referees and registrar of metropolitan buildings may, within six months from the time at which this

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authorizes the charges of providing and maintaining engines, &c. to be paid out of poor-rates. The 82nd exempts watermen retained by insurance offices from liability to be impressed. The 83rd authorizes governors or directors of insurance offices, in the cases specified, to cause insurance monies to be laid out in rebuilding houses, &c. burnt down, demolished, or damaged by fire. The 84th subjects servants by carelessness firing a house to a penalty of 100*l.*; in default of payment, to imprisonment for eighteen months. The 85th prescribes duties of constables and beadles in case of fire, and the 86th prohibits the bringing of any action against any person in whose house, &c. any fire shall accidentally begin, and exempts every such person from liability to make recompense for any damages suffered thereby.

Act comes into operation, apply to the commissioners of Her Majesty's treasury for compensation in respect of the loss they have sustained by reason of the abolition of their offices; and the commissioners shall take any such application into consideration and award such compensation, either by way of a gross sum or annual payment, as they think just, having regard to the nature of the office, the time during which the applicant has held the same, and generally to the special circumstances of each case; and any compensation so given shall be paid out of monies to be provided by parliament; and such compensation, when made by annual payment, shall be subject to this proviso, that if any such official referee or registrar is at any time thereafter appointed to any public office in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than such compensation, or if not shall be diminished by the amount of such salary. Referees and registrar.

CXIV. Any person, except the said official referees and registrar, who at the time when this Act comes into operation is employed in the office of metropolitan buildings, may within six months from such time apply to the metropolitan board of works for employment, and such board shall thereupon take such application into consideration, and they shall either employ the applicant at a salary not less in amount than that which he enjoyed when in the said office of metropolitan buildings, or at a less salary, awarding to him compensation, in respect of such diminution of salary, or they shall award to him such compensation, if any, as they, or in the event of the applicant feeling aggrieved with their decision, as the commissioners of the treasury think just, having regard to the nature of the office, the time during which it has been held by the applicant, and generally to the special circumstances of the case; and any expenses incurred by the said board in carrying into effect this section shall be deemed to be expenses incurred in the execution of the said Act for the better local management of the metropolis, and be raised accordingly; nevertheless, if any such clerk or servant as aforesaid at any time thereafter is appointed to any public office, or to any office under the said metropolitan board in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than the amount of such compensation, or if not shall be diminished by the amount of such salary; but, notwithstanding anything herein contained, the metropolitan board may, in the event of their employing any person mentioned in this section, dismiss him, with the consent of the treasury. Compensation to clerks in office of metropolitan buildings.

FIRST SCHEDULE.

PRELIMINARY.

Structure of buildings.

1. Every building shall be enclosed with walls constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground, or upon concrete or upon other solid substructure.

Construction of walls of brick, stone, &c.

2. Every wall constructed of brick, stone, or other similar substances shall be properly bonded and solidly put together with mortar or cement, and no part of such wall shall overhang any part underneath it, and all return walls shall be properly bonded together.

Extra thickness of certain stone walls.

3. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed for stone walls in the rules hereinafter contained.

Thickness of walls.

4. The thickness of every wall as hereinafter determined shall be the minimum thickness.

Height of story.

5. The height of every topmost story shall be measured from the level of its floor up to the under side of the tie of the roof or up to half the vertical height of the rafters, when the roof has no tie; and the height of every other story shall be the clear height of such story exclusive of the thickness of the floor.

Height of external and party walls.

6. The height of every external and party wall shall be measured from the base of the wall to the level of the top of the topmost story.

Length of walls.

7. Walls are deemed to be divided into distinct lengths by return walls, and the length of every wall is measured from the centre of one return wall to the centre of another; provided that such return walls are external, party, or cross walls of the thickness hereinafter required, and bonded into the walls so deemed to be divided.

Footings of walls.

8. The projection of the bottom of the footing of every wall, on each side of the wall, shall be at least equal to one-half of the thickness of the wall at its base; and the diminution of the footing of every wall shall be formed in regular offsets, and the height from the bottom of such footing to the base of the wall shall be at the least equal to one-half of the thickness of the wall at its base.

PART I.

Rules for the Walls of Dwelling Houses.

I. The external and party walls of dwelling houses shall be made throughout the different stories of the thickness shown in the following table arranged according to the heights and lengths of the walls, and calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length, the heights of the stories being subject to the condition hereinafter given. Thickness of walls of dwelling houses.

II. Table.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 45 Feet. Two Stories, 21½ in. Three Stories, 17½ in. Remainder, 13 in.	Length up to 60 Feet. Two Stories, 26 in. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.	Length unlimited. One Story, 30 in. Two Stories, 26 in. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.
Height up to 90 Feet.	Length up to 45 Feet. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.	Length up to 70 Feet. One Story, 26 in. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.	Length unlimited. One Story, 30 in. Two Stories, 26 in. One Story, 21½ in. Two Stories, 17½ in. Remainder, 13 in.
Height up to 80 Feet.	Length up to 40 Feet. One Story, 21½in. Two Stories, 17½ in. Remainder, 13 in.	Length up to 60 Feet. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.	Length unlimited. One Story, 26 in. Two Stories, 21½ in. Two Stories, 17½ in. Remainder, 13 in.
Height up to 70 Feet.	Length up to 40 Feet. Two Stories, 17½ in. Remainder, 13 in.	Length up to 55 Feet. One Story, 21½ in. Two Stories, 17½ in. Remainder, 13 in.	Length unlimited. One Story, 26 in. Two Stories, 21½ in. One Story, 17½ in. Remainder, 13 in.

TABLE—*continued.*

I.	II.	III.	IV.
Height up to 60 Feet.	Length up to 30 Feet. One Story, 17½ in. Remainder, 13 in.	Length up to 50 Feet. Two Stories, 17½ in. Remainder, 13 in.	Length unlimited. One Story, 21½ in. Two Stories, 17½ in. Remainder, 13 in.
Height up to 50 Feet.	Length up to 30 Feet. Wall below the Topmost Story, 13 in. Topmost Story, 8½ in. Remainder, 8½ in.	Length up to 45 Feet. One Story, 17½ in. Rest of Wall below Topmost Story, 13 in. Topmost Story, 8½ in. Remainder, 8½ in.	Length unlimited. One Story, 21½ in. One Story, 17½ in. Remainder, 13 in.
Height up to 40 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 in. Two Topmost Stories, 8½ in. Remainder, 8½ in.	Length unlimited. One Story, 17½ in. Rest of Wall below Topmost Story, 13 in. Topmost Story, 8½ in. Remainder, 8½ in.	
Height up to 30 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 in. Two Topmost Stories, 8½ in. Remainder, 8½ in.	Length unlimited. Wall below Topmost Story, 13 in. Topmost Story, 8½ in. Remainder, 8½ in.	
Height up to 25 Feet.	Length up to 30 Feet. From Base to Top of Wall, 8½ in.	Length unlimited. Wall below Topmost Story, 13 in. Topmost Story, 8½ in. Remainder, 8½ in.	

Explanation of tables.

III. In using the above table the height of the wall is to be reckoned on the first vertical column on the left hand of the table, and the length of the wall on the corresponding horizontal column. The thickness of the wall in each story is given in inches, and begins with the wall from the base upwards.

Qualification in case of certain walls.

IV. If any external or party wall, measured from centre to centre, is not more than twenty-five feet distant from any

other external or party wall to which it is tied by the beams of any floor or floors, other than the ground floor, or the floor of any story formed in the roof, the length of such wall is not to be taken into consideration, and the thickness of the wall will be found in the second vertical column in the above table.

Condition in respect of stories exceeding a certain height.

V. If any story exceeds in height sixteen times the thickness prescribed for the walls of such story in the above table, the thickness of each external and party wall throughout such story shall be increased to one-sixteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one-fourth part of the length of the wall.

Restriction in case of certain stories.

VI. No story enclosed with walls less than thirteen inches in thickness shall be more than ten feet in height.

Thickness of walls built of materials other than such bricks as aforesaid.

VII. The thickness of any wall of a dwelling house, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the metropolitan board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

Rule as to buildings not being public buildings or buildings of the warehouse class.

VIII. All buildings, except public buildings, and such buildings as are hereinafter defined to be buildings of the warehouse class, shall, as respects the thickness of their walls, be subject to the rules given for dwelling houses.

PART II.

Rules for the Walls of Buildings of the Warehouse Class.

Definition of warehouse class.

I. The warehouse class shall comprise all warehouses, manufactories, breweries, and distilleries.

Thickness at base.

II. The external and party walls of buildings of the warehouse class shall at the base be made of the thickness shown

in the following table, calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length.

III. TABLE.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 55 Feet. — Base, 26 in.	Length up to 70 Feet. — Base, 30 in.	Length unlimited. — Base, 34 in.
Height up to 90 Feet.	Length up to 60 Feet. — Base, 26 in.	Length up to 70 Feet. — Base, 30 in.	Length unlimited. — Base, 34 in.
Height up to 80 Feet.	Length up to 45 Feet. — Base, 21½ in.	Length up to 60 Feet. — Base, 26 in.	Length unlimited. — Base, 30 in.
Height up to 70 Feet.	Length up to 30 Feet. — Base, 17½ in.	Length up to 45 Feet. — Base, 21½ in.	Length unlimited. — Base, 26 in.
Height up to 60 Feet.	Length up to 35 Feet. — Base, 17½ in.	Length up to 50 Feet. — Base, 21½ in.	Length unlimited. — Base, 26 in.
Height up to 50 Feet.	Length up to 40 Feet. — Base, 17½ in.	Length up to 70 Feet. — Base, 21½ in.	Length unlimited. — Base, 26 in.
Height up to 40 Feet.	Length up to 30 Feet. — Base, 13 in.	Length up to 60 Feet. — Base, 17½ in.	Length unlimited. — Base, 21½ in.
Height up to 30 Feet.	Length up to 45 Feet. — Base, 13 in.	Length unlimited. — Base, 17½ in.	
Height up to 25 Feet.	Length unlimited. — Base, 13 in.		

IV. The above table is to be used in the same manner as the table previously given for the walls of dwelling houses, and is subject to the same qualifications and conditions respecting walls not more than twenty-five feet distant from each other. Explanation of table.

V. The thickness of the walls of buildings of the warehouse class at the top, and for sixteen feet below the top, shall be thirteen inches; and the intermediate parts of the wall between the base and such sixteen feet below the top shall be built solid throughout the space between straight lines drawn on each side of the wall, and joining the thickness at the base to the thickness at sixteen feet below the top, as above determined; nevertheless in walls not exceeding thirty feet in height the walls of the topmost story may be eight inches and a half thick. Thickness at top of walls and through intermediate space.

VI. If in any story of a building of the warehouse class the thickness of the wall, as determined by the rules hereinbefore given, is less than one-fourteenth part of the height of such story, the thickness of the wall shall be increased to one-fourteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one-fourth part of the length of the wall. Condition in respect of stories exceeding a certain height.

VII. The thickness of any wall of a building of the warehouse class, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the metropolitan board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls. Thickness of walls built of materials other than such bricks as aforesaid.

MISCELLANEOUS.

I. The thickness of a cross wall shall be two-thirds of the thickness hereinbefore required for an external or party wall of the same dimensions, and belonging to the same class of buildings, but never less than eight and a half inches, and no wall subdividing any building shall be deemed to be a cross wall unless it is carried up to two-thirds of the height of the external or party walls, and unless the recesses and openings therein do not exceed one half of the vertical surface of the wall in each story. Cross walls.

Extra thickness of certain stone walls.

II. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed in the rules aforesaid.

III. Buildings to which the preceding rules are inapplicable require the special sanction of the Metropolitan Board of Works.

SECOND SCHEDULE.

FEES PAYABLE TO DISTRICT SURVEYORS.

PART I.

Fees for new Buildings.

	s.	*d.*
For every building not exceeding four hundred square feet in area, and not more than two stories in height	30	0
For every additional story every additional square of 100 feet or fraction of such square	5	0
But no fee shall exceed 10*l.*	2	6
And for every building not exceeding four hundred square feet in area, and of one story only in height, the fee shall be	15	0

Fees for Additions or Alterations.

For every addition or alteration made to any building after the roof thereof has been covered in, the fee shall be half of the fee charged in the case of a new building.		
For inspecting the arches or stone floors over or under public ways	10	0
For inspecting the formation of openings in party walls	10	0

PART II.

For inspecting dangerous structures, by direction of the commissioners of police or sewers	20	0

N.B.—In this schedule "area" shall include the area of any attached building.

AN ACT

TO ALTER AND AMEND "THE METROPOLITAN BUILDING ACT (1855)."

23RD JULY, 1860.

WHEREAS certain rules of "The Metropolitan Building Act, 1855," have been found to operate prejudicially by limiting the contents of buildings to be erected as workshops for the manufacture of the machinery and the boilers of steam vessels, and as the increased and increasing size of such machinery and boilers for the royal and commercial marine of this country requires larger areas for their manufacture than are allowed by such rule, it is expedient to amend the said Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short Title.

I. This Act may be cited for all purposes as "The Metropolitan Building Act (Amendment), 1860."

Rules as to cubical dimensions of the metropolitan Building Act, 1855, not to apply to buildings to be used for the manufacture of machinery and boilers of steam vessels, provided that such buildings shall consist of one floor only, &c., (a).

II. The rules of "The Metropolitan Building Act, 1855," limiting the cubical dimensions or contents of buildings used either wholly or in part for the purposes of trade or manufacture, shall not after the passing of this Act apply to any building to be used wholly for the manufacture of the machinery and boilers of steam vessels beyond the distance of three miles from Saint Paul's Cathedral: Provided always, that every such building shall consist of one floor only, and shall be constructed of brick, stone, iron, or other incombustible material; and it shall not be lawful for the owners, lessees, or occupiers thereof, or for any persons interested therein, to use such building for any other purpose than the manufacture of the machinery and the boilers of steam vessels until all the rules and provisions of the said Act, as to party walls and other matters which are applicable to buildings of a similar character, shall have been duly complied with: Provided also, that every such building, if of greater

(a) See 18 & 19 Vict. c. 122, s. 27, rule 4.

dimensions than two hundred and sixteen thousand cubic feet, shall be subject to the approval of the metropolitan board of works, in the same manner as iron buildings or buildings to which the rules of the said Act are inapplicable as set forth in the fifty-sixth section of such Act.

24 & 25 VICT. CAP. 87.

AN ACT

TO AMEND THE METROPOLITAN BUILDING ACT (1855).

6TH AUGUST, 1861.

17 & 18 Vict. c. 107.

WHEREAS by "The Exhibition of 1851 Roads and Lands Act," all buildings erected or to be erected by "The Commissioners for the Exhibition of 1851," were exempted from the operation of the Acts then in force for regulating the construction of buildings in the metropolis and its neighbourhood: And whereas the said last-mentioned Acts were repealed by "The Metropolitan Building Act, 1855," and new regulations for the construction of buildings substituted; but doubts are entertained whether the exemption provided by the said first-mentioned Act is continued by the said Building Act of 1855: And whereas it is expedient that such doubts should be removed: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Provisions of 18 & 19 Vict. c. 122, not to apply to buildings of commissioners for the exhibition of 1851 (*a*).

I. The first part of the Metropolitan Building Act, 1855, containing the regulations relating to the construction of buildings in the metropolis, shall not, nor shall any provision therein contained, apply to any buildings erected or to be erected by or with the sanction of the commissioners for the exhibition of 1851 on any lands belonging to them, and purchased in pursuance of any power vested in them by charter or Act of parliament, with the exception of such streets or blocks of buildings as may be erected by them, or with their sanction, as private dwelling houses.

Short title.

II. This Act may be cited for all purposes as the "Metropolitan Building Amendment Act, 1861."

(*a*) See exemption from operation of part 1 of that Act, s. 6, p. 390, *ante*.

8 VICT. CAP. 18.

AN ACT

FOR CONSOLIDATING IN ONE ACT CERTAIN PROVISIONS USUALLY INSERTED IN ACTS AUTHORIZING THE TAKING OF LANDS FOR UNDERTAKINGS OF A PUBLIC NATURE.

8TH MAY, 1845.

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all undertakings authorized by Acts hereafter to be passed.

Interpretations in this Act:

And with respect to the construction of this Act, and of Acts to be incorporated therewith, be it enacted as follows:

"Special Act:"

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking," shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

"prescribed:"

"the works:"

"promoters of the undertaking:" (*a*)

Interpretations in this and the special Act.

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender: Words importing the masculine gender only shall include females:

"Lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure (*b*):

"Lease:" The word "lease" shall include an agreement for a lease:

"Month:" The word "month" shall mean calendar month:

"Superior Courts:" The expression "superior courts" shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require:

"Oath:" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

(*a*) Powers given to promoters may be exercised by principal secretary of state for war department for certain purposes. 23 & 24 Vict. c. 106, s. 7, *post*.

(*b*) This does not include an easement. *Pinchin* v. *London and Blackwall Railway Company*, 24 L. J. (N. S.) Ch. 417. But by 18 & 19 Vict. c. 120, s. 150, boards and vestries may take any easement in or over land.

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town: "County:"

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate: "the sheriff:" "the clerk of the peace:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together: "justices:" "two justices:"

Where, under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking: "owner:"

The expression "the bank" shall mean the Bank of England, where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland. "the bank:"

Short title of the Act.

IV. And be it enacted, that in citing this Act in other Acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Form in which portions of this Act may be incorporated with other Acts.

V. And whereas it may be convenient in some cases to incorporate with Acts of parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Purchase of lands by agreement.

And with respect to the purchase of lands by agreement (*c*), be it enacted as follows:

Power to purchase lands by agreement (*d*).

VI. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act (*e*), and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be law-

(*c*) See *Hawkes* v. *Eastern Counties Railway Company*, 22 L. J. (N. S.) Ch. 77.

(*d*) See 23 & 24 Vict. c. 106, s. 6, *post*.

(*e*) Land wanted for purpose of using soil for an embankment cannot be taken compulsorily; *Beversfield* v. *Mid-Sussex Railway Company*, 5 Jur. (N. S.) Ch. 775.

ful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail (*f*) or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes (*g*), executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestuique trusts*, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestuique trusts* respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability to exercise other powers.

VIII. The power hereinafter given to enfranchise copyhold lands as well as every other power required to be exercised by the lord of any manor, pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rentcharge or incumbrance, and to agree for the apportionment of any such rentcharge or incumbrance shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

(*f*) Inalienable estates tail are within this section; in *re Cuckfield Burial Board*, 10 Beav. 153.

(*g*) See *St. Thomas's Hospital* v. *Charing Cross Railway Company*, 30 L. J. (N. S.) Ch. 395. An equitable tenant for life is not empowered to execute a conveyance; *Lippincott* v. *Smyth*, 29 L. J. (N. S.) Ch. 520.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

Where vendor absolutely entitled, lands may be sold on chief rents.

X. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (*h*).

Payment of rents to be charged on tolls.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the

(*h*) So much of this section as provides that save in the case of lands of which any person is seised in fee, or entitled to dispose of absolutely for their benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is repealed by the 23 & 24 Vict. c. 106, s. 1, *post*; and see ss. 2, 4, and 5 of that Act.

superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who under the provisions hereinbefore contained would be enabled to sell and convey lands to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to sell and repurchase such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal corporations not to sell without the approbation of the treasury.

XV. Nothing in this or the special Act contained shall enable any municipal corporation (*i*) to sell for the purposes of the special Act, without the approbation of the commissioners of Her Majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

(*i*) See 5 & 6 W. 4, c. 76, ss. 94, 96, as to alienation by municipal corporations; and 23 & 24 Vict. c. 106, s. 6, *post*.

Purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement (*k*), be it enacted as follows:

Capital to be subscribed before compulsory powers of purchase put in force.

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

A certificate of two justices to be evidence that the capital has been subscribed.

XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

Notice of intention to take lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Service of notices on owners and occupiers of lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties, or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot

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(*k*) See as to how far s. 68 is included among the provisions under this division of the Act, *Broadbent* v. *Imperial Gas Company*, 26 L. J. (N. S.) Ch. 277.

be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on a corporation aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat or in case of dispute, question to be settled as after mentioned.

XXI. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof (*l*), or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the

(*l*) See s. 153 of 18 & 19 Vict. c. 126, as to notice by metropolitan board before applying for consent of secretary of state to take lands compulsorily.

As to second notice, *Stamps* v. *Birmingham and Stour Valley Railway Company*, 17 L. J. (N. S.) Ch. 431. A notice cannot be withdrawn or revoked; *R.* v. *Commissioners of Manchester*, 4 B. & Ad. 332, *n.*; *Tawney* v. *Lynn and Ely Railway Company*, 16 L. J. (N. S.) Ch. 282; but a notice to take part of premises where the claimant under s. 92 insists on the whole being taken, may be withdrawn; *King* v. *Wycombe Railway Company*, 29 L. J. (N. S.) Ch. 463; and so also a notice by a department of the executive government, where the undertaking has been abandoned for want of funds; *R.* v. *Commissioners of Woods and Forests*, 19 L. J. (N. S.) Q. B. 497. See *Haynes* v. *Haynes*, 30 L. J. (N. S.) Ch. 578. As to requisites of notice, see *Simms* v. *Commercial Railway Company*, 1 Railw. Ca. 43; *Kemp* v. *London and Brighton Railway Company*, 1 Railw. Ca. 495. See further *Hall* v. *Great Northern Railway Company*, 23 L. J. (N. S.) Ch. 524. As to what time should be allowed for coming to an agreement, see *Schwinge* v. *London and Brighton Railway Company*, 3 Smale & Giff. 30.

compensation claimed shall not exceed 50*l.*, the same shall be settled by two justices (*m*).

Compensation exceeding 50*l.* to be settled by arbitration or jury at the option of the party claiming compensation.

XXIII. If the compensation claimed or offered in any such case shall exceed 50*l.*, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking before they have issued their warrant to the sheriff to summon a jury in respect of such lands under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as herein-after provided.

Method of proceeding for settling disputes as to compensation by justices.

XXIV. It shall be lawful for any justice upon the application of either party, with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses upon oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or

(*m*) An adjudication of a sum below 50*l.*, under this section, is an order within 11 & 12 Vict. c. 43, and is bad if founded on a complaint made more than six months after cause of complaint, in *Edmondson*, 17 Q. B. 67; and see *R.* v. *Leeds and Bradford Railway Company*, 21 L. J. (N. S.) M. C. 192.

of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire,

umpire on neglect of the arbitrators, in case of railway companies.

the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final (*n*).

In case of death of single arbitrator the matter to begin *de novo*.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act, the other to proceed *ex parte*.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect (*o*) to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (*p*) (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books, &c.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Arbitrator or umpire to

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in

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(*n*) See *in re Bradshaw*, 17 L. J. (N. S.) Q. B. 362.

(*o*) As to what constitutes neglect see *Willoughby* v. *Willoughby*, 9 Q. B. 923.

(*p*) The award of the umpire may be made at any time before the expiration of three months from the date of his appointment; *In re Bradshaw*, 17 L. J. (N. S.) Q. B. 362. See *Caledonian Railway Company* v. *Lockhart*, 6 Jur. (N. S.) 1311, H. L.

the presence of a justice make and subscribe the following declaration; that is to say, make a declaration.

"I *A. B.* do solemnly and sincerely declare, That I will "faithfully and honestly, and to the best of my skill and "ability, hear and determine the matters referred to me "under the provisions of the Act [*naming the special "Act.*]

A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall act contrary thereto he shall be guilty of a misdemeanor.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators (*a*), shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions. Costs of arbitration how to be borne.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. Award to be delivered to the promoters of the undertaking.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties. Submission may be made a rule of court.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregul rity or error in matter of form (*b*). Award not void through error in form.

(*a*) Or by the umpire: *Gould* v. *Staffordshire Potteries Waterworks Company*, 5 Ex. 214. Costs may be ascertained by a subsequent instrument: *Gould* v. *Staffordshire Potteries Waterworks Company*, *supra*; and see *Quick* v. *London and North-Western Railway Company*, 18 L. J. (N. S.) Q. B. 80. See *R.* v. *Byron*, 17 Q. B. 969; *Martin* v. *Leicester Waterworks Company*, 27 L. J. (N.S.) Ex. 432; *Yates* v. *Mayor, &c. of Blackburn*, 2 L. T. Rep. (N. S.) 746, Ex.

(*b*) The arbitrator seems only to have authority to determine the question of amount; *R.* v. *Metropolitan Commissioners of Sewers*, 22 L. J. (N. S.) Q. B. 234; and compare *R.* v. *London and North*

Promoters of the undertaking to give notice before summoning a jury.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Warrant for summoning jury to be addressed to the sheriff.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking, if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall then be living there and who shall not be interested in the matter in dispute, and with respect to the persons last-mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall immediately on receiving notice of the delivery of the warrant deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person ap-

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Western Railway Company, 23 L. J. (N. S.) Q. B. 185. Nor has he authority to decide on collateral matters; *Byles*, J., *Ipswich Dock Company*, 25 L. J. (N. S.), Ex. 53. As to ejectment to try validity of award, see *North Staffordshire Railway Company* v. *Landor*, 2 Ex. 235. See *In re Bradshaw*, 12 Q. B. 526, and *In re Ware and Regent's Canal Company*, 9 Ex. 395.

(c) See bill to restrain company from proceeding on notice after expiration of compulsory powers, *Hedges* v. *Metropolitan Railway Company*, 6 Jur. (N. S.), 1275, Ch.; 28 Beav. 109.

pointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be impannelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any other jurymen, but no such party shall challenge the array.

Sheriff to preside, witnesses to be summoned.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and, if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Penalty on sheriff and jury for default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit 50*l.* for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding 10*l.*; and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the in-

quiry, so far as the same will extend; and in addition to the penalty hereby imposed every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on witnesses making default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding 10*l*.

Notice of inquiry.

XLVI. Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be sworn.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oaththat they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oatns, as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands and for damage to be assessed separately.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately (*d*) for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of

(*d*) These words are directory; *Re Bradshaw*, 12 Q. B. 502.

the powers of this or the special Act, or any Act incorporated therewith.

Verdict and judgment to be recorded (e).

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof 1*s.*, and for every one hundred words copied or extracted therefrom 6*d.*, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Costs of the inquiry how to be borne (f).

LI. On every such inquiry before a jury where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury and of taking the inquiry, and recording the verdict and judgment thereon, in case such verdict shall be taken shall be defrayed by the owner of the lands and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel

(e) Inquisition good, though it merely described the land as so many acres, without referring to the notice, &c.; *Ostler* v. *Cooke*, (in error,) 18 Q. B. 831; 22 L. J. (N. S.) Q. B. 21; and see *Taylor* v. *Cunison*, 1 Cl. & Fin. 610.

(f) See *Ross* v. *York, &c. Railway Company*, 18 L. J. (N. S.) Q. B. 199; *South Eastern Railway Company* v. *Richardson*, 15 C. B. 810; 21 L. J. (N. S.) C. P. 122.

and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor, under the provisions hereinafter contained; and the payment or deposit of the remainder, if any, of such money, shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice (*g*) of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall, by their warrant to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attornies, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day not later than the eighth day after striking off such jury for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

(*g*) See *Glyn* v. *Aberdare Valley Rail'way Company*, 6 C. B. (N. S.) 257.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen who shall not have been previously struck off the aforesaid list, and may then be attending the court or can speedily be procured, so as to complete such jury, all parties having their lawful challenges (*h*) against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable as hereinbefore provided in the case of a trial by common jury. Deficiency of special jurymen.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial. Other inquiries before same special jury by consent.

LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year. Jurymen not to attend more than once a year.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who by reason of absence from the kingdom is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned. Compensation to absent parties to be determined by a surveyor appointed by two justices.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid after due notice to him for that purpose, such justices shall by writing under their Two justices to nominate a surveyor.

(*h*) See *Re Chelsea Water Works Company, Ex parte Phillips*, 10 Ex. 781.

hands nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. *A. B.*

"Made and subscribed in the presence of ——."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, &c., to be produced to the owner of the lands on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation how to be estimated.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

When compensation to absent party has been determined by a surveyor the party may have the same submitted to arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of party entitled to convey such lands or such interest therein as aforesaid, could not be found, or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to

the court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the superior courts.

Costs of the arbitration.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken (*a*) for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction, under the provisions of this or the special Act or any Act incorporated

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(*a*) The lands must have been actually taken; *Burkenshaw* v. *Birmingham and Oxford Junction Railway Company*, 5 Ex. 475. A tenant from year to year is not within this section, and can only obtain compensation in the mode prescribed by s. 121; *R.* v. *Manchester, Sheffield and Lincolnshire Railway Company*, 4 E. & B. 88. This provision only applies when the company are acting within their powers; *Broadbent* v. *Imperial Gas Company*, 26 L. J. (N. S.) Ch. 276; and it does not authorize a jury to determine a question of title; *R.* v. *London and North Western Railway Company*, 28 L. J. (N. S.) Q. B. 185. See cases cited in note (*d*) to s. 225 of 16

therewith (*b*), and if the compensation claimed in such case shall exceed the sum of 50*l.*, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided (*c*); or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days (*d*) after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed; and the same may be recovered by him, with costs, by action in any of the superior courts (*e*).

Application of compensation.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money payable to parties

LXIX. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from

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& 19 Vict. c. 120, *ante*. Where jury had considered a matter as to which they had no jurisdiction, a *certiorari* issued; *Penny* v. *South Eastern Railway Company*, 26 L. J. (N. S.) Q. B. 225; and see *Chapman* v. *Monmouthshire Railway Company*, 27 L. J. (N.S.) Ex. 97; *Mortimer* v. *South Wales Railway Company*, 5 Jur. (N. S.) 784, Q. B., 28 L. J. (N. S.) Q. B. 129.

(*b*) This provision applies where the lands have been entered under, s. 85; *Adams* v. *London and Blackwall Railway Company*, 2 M. & G. 118.

(*c*) See sect. 25 *et seq.*

(*d*) See *Yates* v. *Mayor of Blackburn*, 29 L. J. (N.S.) Ex. 447.

(*e*) See *Williams* v. *Jones*, 13 M. & W. 628; *Corrigal* v. *London and Blackwall Railway Company* M. & G. 219.

any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of 200*l.*, the same shall be paid nto the bank, in the name and with the privity of the accountant general of the court of Chancery in England if the same relate to lands in England or Wales, or the accountant general of the court of Exchequer in Ireland if the same relate to the lands in Ireland, to be placed to the account there of such accountant general *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,) Under disability amounting to 200*l.* to be deposited in the bank.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance (*f*) affecting the land in respect of which such money shall have been paid, or affecting other lands (*g*) settled therewith to the same or the like uses, trusts, or purposes; or Application of monies deposited.

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the court of Chancery shall direct (*h*); or

In payment to any party becoming absolutely entitled to such money.

LXX. Such money may be so applied as aforesaid upon an order of the court of Chancery in England or the court of Exchequer in Ireland, made on the petition of the party who Order for application and investment meanwhile.

(*f*) The residue of a term of years is an incumbrance within this section; *Ex parte Burgesses of Sheffield*, 2 Jur. (N.S.) 31.

(*g*) See *Ex parte Corporation of Cambridge*, 6 Hare, 90.

(*h*) See *Ex parte Lockwood*, 14 Beav. 168.

would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied, it may, upon the like order, be invested by the said accountant general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

LXXI. If the purchase money or compensation shall not amount to the sum of 200*l.* and shall exceed the sum of 20*l.*, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding 200*l.*, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not exceeding 20*l.* to be paid to parties.

LXXII. If such money shall not exceed the sum of 20*l.*, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled to be paid into bank.

LXXIII. All sums of money exceeding 20*l.* which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so

agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the court of Chancery in England, or the court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the court of Chancery in England or the court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking, upon deed poll being executed.

LXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands

and seals of the promoters or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the owner (*i*) of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking (*i*), or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant general of the court of Chancery in England or the court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

(*i*) See *Doe and Hutchinson* v. *Manchester, Bury, and Rossendale Railway Company*, 14 M. & W. 687.

(*k*) As to where vendor only shows possessory title, see *Douglas* v. *North Western Railway Company*, 3 Jur. (N. S.) 181; and as to owner, *Id.*

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said court of Chancery in England or the court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Application of monies so deposited.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands as being the owners thereof, or in receipt of the rents of such lands as being entitled thereto, at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so depo-

Party in possession to be deemed the owner.

sited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited (*l*).

LXXX. In all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the court of Chancery in England or the court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the court of Chancery in England or the court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the conveyances of lands, be it enacted as follows:

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the

(*l*) See *Ex parte Dashwood*, 26 L. J. (N. S.) Ch. 299; in the matter of *Taylor*, 1 Mac. & G. 210; *Armitage* v. *Askham*, 1 Jur. (N. S.) 227; *re Nash*, 1 Jur. (N. S.) 1062; *Dixon* v. *Jackson*, 25 L. J. (N. S.) Ch. 568; *Ex parte Peyton's* settlement, 2 Jur. (N. S.) 1013; *In re London, Brighton, and South Coast Railway Company*, 18 Beav. 608; *In re Spooner's Estate*, 1 Kay & J. 230; *In re Hungerford*, 1 Kay & J. 413.

provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritence.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the parties entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs

shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Entry on lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any land which shall be required to be purchased or permanently used (*a*) for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interest therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security, and giving bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank (*b*) by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested (*c*) in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands or

(*a*) Making a tunnel is a permanent using; *Ramsden* v. *Manchester and Altrincham Railway Company*; 1 *Ex.* 723; and see note (*c.*) *infra*.

(*b*) See *Ex parte Stevens*, 13 Jur. 2; *Stamps* v. *Birmingham and Stour Valley Railway Company*; 6 Railway Cases, 196.

(*c*) See *Willey* v. *South-Eastern Railway Company*, 18 L. J. (N.S.) Ch. 201.

of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any two of them, with two sufficient sureties (*d*), to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require (*e*), under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so entered upon, together with interest thereon at the rate of 5*l.* *per centum per annum* from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands (*f*) without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit being made, cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the accountant-general of the court of Chancery in England or the court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the bank shall give to the promoters of the undertaking or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

(*d*) See *Barker* v. *North Staffordshire Railway Company*, 2 De G. & S. 55.

(*e*) See *Hoskin* v. *Phillips*, 18 L. J. (N. S.), Ex. 1; *Poynder* v. *Great Northern Railway Company*, 16 L. J. (N. S.), Ch. 444.

(*f*) See as to what constitutes a taking and using, *Ferrand* v. *Bradford Corporation*, 21 Beav. 412; and *quære*, whether by diverting a stream the river into which it flowed is injuriously affected, *ibid.*; and see *Ramsden* v. *Manchester, &c. Railway Company*, 1 Ex. 723.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the conditions of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the court of Chancery in England or the court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant general is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the accountant general of the court of Chancery in England or the court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said accountant general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the accountant general, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant general accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

Penalty on the promoters of the undertaking entering

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special

Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of 10*l.*, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of 25*l.* for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

upon lands without consent before payment of the purchase money.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Decision of justices not conclusive as to the right of the promoters.

XCI. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same (*f*), it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of

Proceedings in case of refusal to deliver possession of lands.

(*f*) See as to payment of costs by vendor, *Re Turners' Estate and Metropolitan Railway*, 5 L. T. Rep. (N. S.) 524.

such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house (*b*).

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Intersected lands.

And with respect to small portions of intersected land, be it enacted as follows:

Owners of intersected lands may insist on sale.

XCIII. If any lands not being situate in a town (*c*) or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required

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(*b*) See *King* v. *Wycombe Railway Company*, 29 L. J. (N. S.) Ch. 462; and as to abandonment of notice to take land, *ibid.* A company having given notice of taking part of a workshop, and the plaintiff having given a counter-notice that they should take the whole, the company were restrained from taking possession until they had paid compensation for the whole, or taken steps for assessing the value; *Giles* v. *London, Chatham, and Dover Railway Company*, 30 L. J. (N. S.) Ch. 603. See further, *Sparrow, Oxford, and Wolverhampton Railway Company*, 2 De G. M'N. & G. 94; *R.* v. *London and South Western Railway Company*, 17 L. J. (N. S.) Q. B. 326; *Cole* v. *West-end London, &c., Railway Company*, 23 L. J. (N. S.) Ch. 767; *Hewson* v. *South Wales Railway Company*, 2 L. T. Rep. (N. S.) 369; *Governors of St. Thomas's Hospital* v. *Charing Cross Railway Company*, 7 Jur. (N. S.) 256; *Gardiner* v. *Charing Cross Railway Company*, 31 L. J. (N. S.) Ch. 181; *Dadson* v. *East Kent Railway Company*, 7 Jur. (N. S.) 941; *Lord Grosvenor* v. *Hampstead Junction Railway Company*, 26 L. J. (N. S.) Ch. 734; *Barker* v. *North Staffordshire Railway Company*, 2 De G. & S. 55; *Schwinge* v. *London and Blackwall Railway Company*, 24 L. J. (N. S.) Ch. 405.

(*c*) See *Elliott* v. *South Devon Railway Company*, 2 Ex. 725.

for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value (*d*).

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Copyholds.

And with respect to copyhold lands, be it enacted as follows:

Conveyance of copyhold lands to be enrolled.

XCV. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure or of the nature thereof shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward (*e*) of such manor of such fees (*f*) as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment;

(*d*) See *Marriage* v. *Eastern Counties Railway Company*, 27 L. J. (N.S.) Ex. 185.

(*e*) See *Ecclesiastical Commissioners* v. *London and South Western Railway Company*, 14 C. B. 743.

(*f*) *Cooper* v. *Norfolk Railway Company*, 18 L. J. (N. S.) Ex. 176.

and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him; and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden, shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid, shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common lands.

And with respect to any such lands being common or waste lands, be it enacted as follows:

Compensation for common lands, where held of a manor, &c. how to be paid.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined, all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c. to convey to the promoters of the undertaking, on receiving compensation for his interest.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in

the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for common lands not held of a manor how to be ascertained.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor a like notice shall be given to the lord of such manor.

CIII. It shall be lawful for the meeting so called to appoint a committee not exceeding five in number of the parties entitled to any such rights, and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties. Meeting to appoint a committee.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee or of any three of them, for such compensation, shall be an effectual discharge for the same, and such compensation, when received, shall be apportioned by the committee among the several persons interested therein according to their respective interest, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof. Committee to agree with the promoters of the undertaking.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation. Disputes to be settled as in other cases.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices as hereinbefore provided in the case of parties who cannot be found. If no committee be appointed, the amount to be determined by a surveyor.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled Upon payment of compensation payable to commoners the lands to vest.

to immediate possession thereof: and it shall be lawful for the court of Chancery in England or the court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in mortgage.

And with respect to lands subject to mortgage, be it enacted as follows:

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Deposit of mortgage money on refusal to accept.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner pro-

vided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such land, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking,

and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money when refused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee

in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of

Rentcharges the mortgaged lands under the provision hereinbefore contained.

Release of lands from rentcharges.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of lands from charge.

CXVI. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fails so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts. Charge to continue on lands not taken.

Leases.

And with respect to lands subject to leases, be it enacted as follows:

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part and the promoters of the undertaking on the other part; and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, ex- Where part only of lands under lease taken, the rent to be apportioned.

cept as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as a tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein (*a*), he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater interest claimed than from year to year, lease to be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

(*a*) A tenant from year to year has no right to compensation if his interest has been determined by a notice to quit; *Ex parte Merrett Re Portsmouth Railway Company*, 2 L. T. Rep. (N. S.) 471. Where the notice to take lands is withdrawn or suspended, the tenant is entitled to compensation for any expense he may have been put to by the notice; *R. v. Commissioners under Rochdale Improvement Act*, 2 Jur. (N.S.) 861.

Limit of time for compulsory purchase (*b*).

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act.

Interests omitted to be purchased.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which, under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice (*c*) of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest or charge before their en-

(*b*) As to what is not an exercise of compulsory powers of purchase, see *Marquis of Salisbury* v. *The Great Northern Railway Company*, 17 Q. B. 840.

(*c*) An action of ejectment will not lie against a company who have entered until expiration of six months after notice of claim; *Jolly* v. *The Wimbledon and Dorking Railway Company*, 5 L. T. Rep. (N. S.) 614.

tering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company and determined in favour of the party claiming the same, pay the full costs (*d*) and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Sale of superfluous land.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

CXXVIII. Before the promoters of the undertaking dis-

(*d*) This means costs as between attorney and client; *Doe d. Hyde* v. *Mayor of Manchester*, 12 C. B. 474.

pose of any such superfluous lands, they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Right of pre-emption to be claimed within six weeks.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Differences as to price to be settled by arbitration.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so

Lands to be conveyed to the purchasers.

have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any Act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax. Land tax and poor's rate to be made good.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters. Service of notices upon company.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court. Tender of amends.

And with respect to the recovery of forfeitures, penalties, and costs (*a*), be it enacted as follows: *Recovery of penalties.*

(*a*) By 18 & 19 Vict. c. 120, s. 151, the provisions with respect to the recovery of forfeitures, penalties, and costs, are excepted from the provisions incorporated with that Act.

Penalties to be summarily recovered before two justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be levied by distress.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Distress how to be levied.

CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any

poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Distress against the treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed 20*l.*, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

CXLI. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Penalties to be sued for within six months.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalty on witnesses making default.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give

evidence before such justice, every such person shall forfeit a sum not exceeding 5*l.* for every such offence.

Form of conviction.

CXLIV. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this Act annexed.

Proceedings not to be quashed for want of form.

CXLV. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

CXLVII. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, and be it enacted, that, notwithstanding anything herein or in the special Act, or any Act incorporated therewith contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and,

except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made, shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons giving false evidence liable to penalties of perjury.

CXLIX. And be it enacted, That any person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to special Act.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

Copies of special Act to be kept and deposited, and allowed to be inspected.

CL. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled

7 W. 4 & 1 Vict. c. 83. "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Penalty on company failing to keep or deposit.

CLI. If the company shall fail to keep or deposit, as herein before mentioned, any of the said copies of the special Act, they shall forfeit 20*l.* for every such offence, and also 5*l.* for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

CLII. And be it enacted, that this Act shall not extend to Scotland.

Act may be amended this session.

CLIII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I —— of —— in consideration of the sum of —— paid to me [*or, as the case may be,* into the Bank of England [*or* Bank of Ireland], in the name and with the privity of the accountant-general of the court of Chancery, *ex parte* "The Promoters of the Undertaking" [*naming them*] *or* to *A. B.* of —— and *C. D.* of —— two trustees appointed to receive the same], pursuant to the [*here name the special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the —— day of —— in the year of our Lord ——.

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I —— of —— in consideration of the rentcharge to be paid to me, my heirs and assigns, as herein after mentioned, by "The Promoters of the Undertaking" [*naming them*] incorporated [*or* constituted] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of —— by equal quarterly [*or* half-yearly, *as agreed upon,*] portions henceforth on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the —— day of —— in the year of our Lord ——.

SCHEDULE (C.)

Form of Conviction.

to wit.

Be it remembered, that on the —— day of —— in the year of our Lord —— *A. B.* is convicted before us, *C.*, *D.*, two of Her Majesty's justices of the peace for the county of —— [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special Act*]. Given under our hands and seals, the day and year first above written.

C., *D.*

23 & 24 VICT. CAP. 106.

AN ACT

TO AMEND THE LANDS CLAUSES CONSOLIDATION ACTS (1845) IN REGARD TO SALES AND COMPENSATION FOR LAND BY WAY OF A RENT-CHARGE, ANNUAL FEU DUTY OR GROUND ANNUAL, AND TO ENABLE HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE WAR DEPARTMENT TO AVAIL HIMSELF OF THE POWERS AND PROVISIONS CONTAINED IN THE SAME ACTS.

20TH AUGUST, 1860.

8 & 9 Vict. c. 18.

WHEREAS it is expedient to extend the provisions of the "Lands Clauses' Consolidation Acts, 1845," in regard to sales of land, or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable Her Majesty's principal secretary of state for the war department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the war department or for the defence of the realm: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Part of sect. 10 of recited Act repealed.

I. So much of the tenth section of the "Lands Clauses' Consolidation Act, 1845," as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.

Sects. 10 and 11 of recited Act, as to power to sell &c., lands for an annual rentcharge,

II. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such

compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

and to recover, extended to all sales, &c. where parties are under disability.

III. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the "Lands' Clauses Consolidation (Scotland) Act, 1845," and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Similar proviso with regard to lands sold under sect. 10 of 8 & 9 Vict. c. 19.

IV. In every case of such sale or compensation by and parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

Amount of rentcharge to be settled in manner directed in the 9th section of recited Acts.

V. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

equal to twenty years' purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c. for public purposes.

VI. The clauses contained in "The Lands Clauses Consolidation Act, 1845," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the commissioners of Her Majesty's Treasury, under the powers for that purpose contained in "The Municipal Corporation Mortgages, &c., Act, 1860."

Power to secretary for war to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

VII. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the war department or for the defence of the realm, it shall be lawful for Her Majesty's principal secretary of state for the war department for the time being to use all or any of the powers and provisions by the "Lands Clauses Consolidation Act, 1845," and by the "Lands Clauses Consolidation (Scotland) Act, 1845," given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act, and all the powers and provisions thereof shall, if used by Her Majesty's principal secretary of state for the war department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of Her Majesty's ordnance, and had been transferred to the said principal secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorize any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes or either of them.

This Act and 8 & 9 Vict. cc. 18 & 19 to be construed together.

VIII. This Act shall be read and construed as part of the said "Lands Clauses Consolidation Act, 1845," or of the "Lands Clauses Consolidation (Scotland) Act, 1845," in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

22 & 23 VICT. CAP. 66.

AN ACT

FOR REGULATING MEASURES USED IN SALES OF GAS.

13TH AUGUST, 1859.

WHEREAS it is expedient that the measurement used in sales of gas for lighting, heating, and other purposes, should be hereafter regulated by one uniform standard, and that all meters should be stamped as hereinafter provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpretation of words "meter," and "person."

I. In construing this Act the word "meter" shall mean gas meter, and shall include every kind of machine used for measuring gas; and the word "person" shall include corporations.

Fixing unit of measure.

II. After the passing of this Act, the only legal standard or unit of measure for the sale of gas by meter shall be the cubic foot containing 62·321 pounds avoirdupois weight of distilled or rained water, weighed in air at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches, except as relates to contracts made before the passing of this Act by which a different unit of measure is adopted, which contracts may not be renewed.

Models of measures to be made and verified under the direction of the treasury.

III. Within three months next after the passing of this Act models of gasholders measuring the said cubic foot, and such multiples and decimal parts of the said cubic foot as the lord high treasurer or the commissioners of Her Majesty's treasury of the United Kingdom for the time being shall judge expedient, and from time to time after the expiration

of the aforesaid period of three months, models of such further multiples and decimal parts of the said cubic foot as the lord high treasurer or the said commissioners shall from time to time think expedient, shall be carefully made with proper balances, indices, and apparatus, for testing the measurement and registration of meters, and such models shall be verified under the direction of the lord high treasurer or the said commissioners, and when so made and verified shall be deposited in the office of the comptroller general of the Exchequer at Westminster; and copies of the models so from time to time deposited, verified as aforesaid, shall be sent to the lord mayor of London, and the chief magistrate of Edinburgh and Dublin, and to the chief magistrate of such other cities and boroughs, and to such other places and persons in Her Majesty's dominions, as the said lord high treasurer or the aforesaid commissioners may from time to time direct; and the said lord high treasurer or the said commissioners shall appoint a competent person or persons to design and make, subject to the approval and by direction of such lord high treasurer or the said commissioners, stamps of a uniform design to be used for stamping meters throughout the United Kingdom, with only such variations of numbers or marks thereon as shall be sufficient to distinguish each inspector's district.

Models to be deposited.

Copies of the models of gasholder to be provided by order of general or quarter sessions in England, and by meetings of justices in Scotland.

IV. In England at some general or quarter sessions of the peace within nine months next after the passing of this Act, the justices of the peace of every county, riding, or division, or county of a city or county of a town, in general or quarter sessions assembled (*a*), and in such boroughs as may adopt this Act, as hereinafter provided, the town council at the meeting next after such adoption, and in Scotland the justices of the peace at a meeting to be called for the purpose by the sheriff of each county, and the magistrates of each royal burgh, within nine months after the passing of this Act, and so from time to time at any subsequent general or quarter sessions or meeting so called, shall determine the number of copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their respective jurisdictions, and shall direct that such copies, verified and stamped at the Exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be depo-

(*a*) The powers given by this Act as amended by 23 & 24 Vict. c. 146, are, as to the metropolis, transferred to the Metropolitan Board of Works by 24 & 25 Vict. c. 79, s. 1, *post*.

sited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall subdivide and reallot such districts, and all such districts shall be distinguished by the number or mark applied thereto on such stamps, and they shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or town council or magistrates as aforesaid to perform, and they are hereby empowered to suspend or dismiss any inspectors so appointed, or to appoint additional inspectors as occasion may require: Provided always, that nothing herein contained shall extend to compel any town council in England or royal burgh of Scotland, except such as are county towns, wherein gas is used, to provide copies of the said models and stamps, or to appoint an inspector or inspectors for the performance of the duties prescribed by this Act; and that it shall be lawful for the justices of the peace in any county, and for the magistrates of any royal burgh within such county, where they shall agree, to unite the whole or a portion of the county with such royal burgh, and to appoint one inspector therefor, and to provide, at their joint expense, copies of the said models and stamps to be used within such united districts: Provided always, that in every borough in England where there is a town council, not being a manufacturer or seller of gas, it shall be lawful for such town council, within six months after the passing of this Act, after one month's notice duly given in the manner in which notices are usually published by such town council, to adopt this Act, if the majority of the members present at any council meeting at which the subject is appointed to be considered shall so determine; and if no resolution to that effect shall be passed within such time, then the justices aforesaid, at their next practicable general or quarter sessions after the expiration of such six months, shall in reference to any borough not so adopting this Act carry this Act into effect; and in all boroughs as aforesaid in which the town council is a manufacturer or seller of gas, the justices of such boroughs shall have such and the like powers of adopting and carrying into effect the provisions of this Act within such boroughs as by this Act are given to town councils not being manufacturers or sellers of gas.

Appointment of inspectors

VI. The copies of the said models so directed by the said justices, magistrates, or town council to be verified and stamped at the Exchequer shall be compared with the models deposited with the comptroller general of the Exchequer as aforesaid, and if correct shall be verified and stamped by the

Officers of the Exchequer at Westminster to stamp copies of models.

comptroller general, or some other officer of the Exchequer at Westminster, duly authorized, upon payment of such fees as are at present payable upon verification and stamping a set of measures under the Acts relating to weights and measures, and no stamp duty shall be payable thereon.

Expense of providing copies of models and remuneration of inspectors defrayed out of county rates, &c.

VII. The expense of providing and transmitting such copies of models of gasholders, with proper balances, indices, and apparatus as aforesaid, and of the stamp to be used by the inspectors, and the remuneration to the inspectors, shall be paid in England out of the stock raised in such counties, ridings, divisions, counties of cities or counties of towns, and in boroughs out of any funds applicable to lighting purposes, and if no such funds then out of the borough fund; and in Scotland such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs by the magistrates thereof, according to the real rent of lands and heritages as appearing on the valuation roll of such shires, stewartries, and burghs respectively, and in such manner and by such persons as the said commissioners of supply and magistrates respectively may determine and appoint, and such assessments shall be collected under the same powers of levying and recovery as are competent for levying and recovering the land tax: Provided always, that in the city of London the expenses and remuneration aforesaid shall be paid out of the consolidated rate raised by the commissioners of sewers of the city of London, and in Ireland such expenses in the respective boroughs and towns shall be provided for and paid respectively out of any funds applicable to lighting purposes, and if no such fund then out of any other borough or town fund.

No maker or seller of meter, or person in the service of any gas company or manufacturer of meters or gas, to be an inspector.

Inspector to enter into recognizances.

VIII. No maker, repairer, or seller of meters or of gas, or person employed in the making, repairing, or selling of meters or gas, shall be an inspector of meters under the provisions of this Act; and every inspector shall forthwith enter into a bond or recognizance to the Queen, to be sued for in any courts of record, in such sum, and either with or without a surety or sureties, as the justices, magistrates, town council, or other persons by whom he may have been appointed shall fix, for the due and punctual performance of the duties of his office, and for the due and punctual payment at such time or times as he may be directed by the justices, magistrates, town council, or other persons by whom he may have been appointed, of all fees received by him under the authority of this Act, and for the safety of the said copies of models and stamps committed to his charge, and for their due restoration and surrender to such person or persons as may be appointed to receive them by the justices, magistrates, town council, or

other persons aforesaid immediately on his removal or other cessation from office.

Inspectors to attend at towns where gas is consumed, when required by justices.

IX. In England the justices in general or quarter sessions assembled, or the town council in boroughs adopting this Act at any meeting thereof, and in Scotland the justices or magistrates at a meeting called for the purpose, and in Ireland the town council or town commissioners of any such borough or town as aforesaid, shall determine and appoint on what days, at what hours, and what places each and every inspector shall attend with the said copies of models and stamps in his custody at each of the several towns and districts within their respective jurisdictions as they shall deem expedient; and every such inspector so attending shall examine, test, and, if found correct, stamp all such meters as shall be required under the provisions of this Act to be so examined, tested, and stamped, and shall deface or destroy the stamp on any meter tested and found incorrect under the provisions of this Act, and he shall keep a book wherein he shall enter minutes of all such examinations and testings, with the numbers of identity and capacity marked by the manufacturer on such meters, and give, if required, a certificate under his hand of every such stamping and defacing; and every inspector shall once in every quarter of a year account to the treasurer of the county, riding, division, county of a city or county of a town, or borough or town, or to such other person as shall be duly authorized by those by whom he may have been appointed, for all fees received by him under this Act, and shall pay the amount thereof to such treasurer as aforesaid, who shall account for the same.

Inspector to pay fees to treasurer of county, &c.

Meters when stamped need not be re-stamped.

X. No meter duly stamped under the authority of this Act shall be liable to be re-stamped, although the same be used in any other place than that at which the same was originally stamped, but shall be considered as a legal meter throughout the United Kingdom, unless found to be incorrect within the meaning of this Act.

Penalty on inspector for misconduct.

XI. In case any inspector of meters shall stamp any meter without duly testing and finding the same to be correct, or shall refuse, or for three days after being so required under the provisions of this Act neglect, without lawful excuse, to test any meter or to stamp any meter found to be correct on being so tested, or shall be guilty of a breach of any duty imposed upon him by this Act, or shall otherwise misconduct himself in the execution of his office, every such offender shall upon conviction forfeit a sum not exceeding 5*l.* for every such offence.

Meters not to be stamped

XII. No meter shall be stamped which shall be found by the inspector to register, or be capable of being made by any

If more than two per cent. incorrect in favour of the buyer, or three per cent. in favour of the seller, and to be stamped if erroneous to no greater extent.

contrivance for that purpose, or by increase or by decrease of the water in such meter, or by any other means practically prevented in good meters, to register, quantities varying from the true standard measure of gas more than two per centum in favour of the seller or three per centum in favour of the consumer; and every meter, whether stamped or unstamped, which shall be found by such inspector to register or be so capable of being made to register quantities varying beyond the limits aforesaid, shall be deemed incorrect within the meaning of this Act; and every meter which shall be found by such inspector to measure and register quantities accurately, or not varying beyond the limits aforesaid, and shall be found incapable by any such means as aforesaid of being made to register quantities varying beyond the limits aforesaid, shall be considered to be correct, and be stamped as aforesaid in such manner and on such part of the meter as shall be specially directed by the authority appointing him, or in default of such direction as shall in his opinion best prevent fraud: Provided always, that

Certain meters incorrect against the seller of gas may be used by agreement.

every meter having a measuring capacity at one revolution or complete action of the meter of not less than five cubic feet, and having permanently marked upon it in some conspicuous place the words "without float," shall be stamped by the inspectors, if found correct, within the meaning of this Act, in all other respects except that it is capable of being made by abstraction of water to register incorrectly against the seller of gas, but it shall not be lawful after the time aforesaid to use in the sale of gas any such meter, when so stamped by the inspector, except by written agreement between the buyer and seller specifying that this description of meter shall be used.

Rules for testing meters.

XIII. The following rules shall be observed by the inspector in testing meters under the provisions of this Act:

Firstly, the meter shall be tested for soundness or leakage only, and not for per-centage of error, when fixed on a horizontal base, and with gas under a pressure equal to a column of water three inches high, with a light or lights consuming not more than one-twentieth part of its measuring capacity per hour marked thereon, nor less than one-half of a cubic foot per hour, for all meters of a measuring capacity not exceeding one hundred cubic feet per hour, and not more than one-fortieth part of its said measuring capacity per hour for all meters of any greater measuring capacity per hour than one hundred cubic feet; and all meters found to work under such test shall be deemed sound meters, and any meter found not to work under such test shall not be stamped:

The meter to be tested for per-centage of error shall be fixed on a horizontal base, and shall be tested at a pressure equal to a column of water five-tenths of an inch high, and passing the quantity of gas or atmospheric air per hour which shall be marked thereon as its measuring capacity per hour, and the

water used in such testing, and the air of the room in which such testing shall be made, shall be as nearly as practicable of the same temperature as the gas or air passed through the meter.

Penalty for counterfeiting stamps.

XIV. If any persons shall make, except under the authority of this Act, or forge or counterfeit, or cause or procure to be made, except as aforesaid, or forged or counterfeited, or knowingly act or assist in the making, except as aforesaid, or forging or counterfeiting, any stamp or mark which may be hereafter used for the stamping or marking of any meter under this Act, every person so offending shall for every such offence forfeit on conviction a sum not exceeding 50*l.* or less than 10*l.*; and if any person shall knowingly sell, utter, or dispose of, let, lend, or expose to sale, any meter with such forged stamp or mark thereon, every person so offending shall for every such offence forfeit on conviction a sum not exceeding 10*l.* or less than 40*s.*, and all meters with such forged or counterfeit stamps shall be forfeited and destroyed.

Penalty for obstructing inspector.

XV. Any person who shall knowingly repair or alter, or knowingly cause to be repaired or altered, or knowingly tamper with, or do any other act in relation to any stamped meter so as to cause such meter to register unjustly or fraudulently, or who shall prevent or refuse to allow lawful access to any meter in his possession or control, or the supply of water thereto as hereinafter provided, or shall obstruct or hinder any examination or testing authorized by this Act of any such meter, shall on conviction forfeit a sum not exceeding 5*l.*, pay the fees for removing and testing, and the expense of purchasing and fixing a new meter; provided that the payment of any such penalty as aforesaid shall not exempt the person paying from liability to indictment or other proceeding at law to which he would otherwise be liable, or deprive any person of the right to recover damages against such person for any loss or injury sustained by such Act or default.

Consumers may use any stamped meter.

XVI. Every consumer of gas may purchase and use for the measurement of the gas supplied to him any meter duly stamped under the authority of this Act, provided that the gas to be consumed per hour shall not exceed the quantity per hour the meter is intended to measure, so marked on the outside thereof as aforesaid.

After ten years all meters to be stamped.

XVII. After the expiration of ten years from the passing of this Act all meters whatsoever not previously stamped which shall be used for buying and selling gas, or for the collecting of any rates or duties, or for making any charges on the passage, transmission, or conveyance of gas, shall be examined and tested under the authority of this Act, and

stamped if found correct; and every person who shall after the times respectively fixed by this Act knowingly use any meter which has not been so stamped as aforesaid shall on conviction forfeit a sum not exceeding 5*l.*, and any contract, bargain, or sale made by any such meter shall be void; and every such meter so used shall, on being discovered by any inspector so appointed as aforesaid, be seized, and, on conviction of the person knowingly using or possessing the same, shall be forfeited and destroyed.

After twelve months no meter to be sold, &c. unless stamped; and unstamped meters may be stamped if required, or stamped meters substituted, at the expense of the person requiring it.

XVIII. No meter for the purpose of ascertaining the quantity of gas sold shall be fixed for use after the expiration of twelve months after the passing of this Act, unless the same shall have its measuring capacity at one revolution or complete action of the meter, and also the quantity per hour it is intended to measure in cubic feet, or multiples or decimal parts of a cubic foot, denominated or marked on the outside thereof in legible letters or figures, and shall be stamped by an inspector of meters under the provisions of this Act; and every person who after the expiration of such twelve months shall fix for use any such meter before it has been so stamped shall be liable to a penalty of 5*l.* for every such unstamped meter; and all meters required to be tested and stamped, except as hereinafter mentioned, shall be delivered to the inspector at the place where his testing gasholder and apparatus may be kept; and every purchaser and seller of gas by meter may, at his own expense, at any time after the expiration of the said twelve months, require any unstamped meter by which his gas is measured to be examined, tested, and, if found correct, stamped, or he may at his own expense substitute a stamped meter in the place of any such unstamped meter: Provided always, that such purchaser or seller of gas shall before removal of any such unstamped meter for the purposes aforesaid give twenty-four hours' notice in writing of such intended removal to the other party to the contract.

Fees for testing and stamping meters.

XIX. The fees for examination, comparison, and testing, with or without stamping, meters, shall be 6*d.* for each meter delivering a cubic foot of gas in four or more revolutions or complete repetitions of the action of the meter, and 1*s.* for each meter delivering a cubic foot of gas by any less number of revolutions or complete actions, or one revolution or complete action, and for each meter delivering more than one cubic foot of gas by one revolution or complete action the further sum of 1*s.* for every cubic foot of gas delivered at one revolution or complete action beyond the first cubic foot.

Power to

XX. In England and in such boroughs and towns as afore-

said in Ireland it shall be lawful for any inspector authorized in writing under the hand of any justice of the peace in England or Ireland, or of any sheriff, justice, or magistrate in Scotland, at the request and expense of any buyer or seller of gas, who shall have given twenty-four hours' notice in writing to the other party to the contract, at all seasonable times to enter any house or shop, store, warehouse, still, yard, or place whatsoever within his jurisdiction where any meter, whether stamped or unstamped, shall be fixed or used, and to examine and test the same, and if necessary for such purpose to remove such meter, doing as little damage thereby as may be; and if upon such examination and testing it shall appear that any such meter is incorrect within the meaning of this Act, or fraudulent, the same shall not be refixed or used again unless and until altered and repaired so as to measure and register correctly, and stamped; and the fees on such removal, examination, and testing of a meter, whether stamped and replaced or not, shall be double the fees hereinbefore made payable for testing and stamping, and shall be payable by the buyer or seller of gas as the justice of the peace in England or Ireland, or the sheriff, justice, or magistrate in Scotland, as the case may be, shall determine, and shall be recoverable accordingly: Provided always, that in case the head office of the person or company to whom such notice is to be given shall be more than twenty miles distant from the meter referred to in such notice, three days' notice in writing shall be given instead of twenty-four hours' notice as aforesaid; and provided also, that any person duly authorized by any company or persons selling gas by meter may supply water to any meter, so as to keep the water at the correct level.

Justices and inspectors to enter houses, &c. and inspect gas measures and meters.

XXI. In case of any dispute between the buyer and seller of gas by meter, or between any owner of a meter and any inspector of meters under this Act, respecting the correctness of any meter, the inspector shall, if required by any such person dissatisfied with his decision, give such party his reasons in writing for such decision, and such party may require such meter to be examined and re-tested by two inspectors of adjoining or neighbouring districts, to be named by any justice of the peace having jurisdiction in the district where such meter shall have been tested; and the unanimous decision of such last-mentioned inspectors shall be final as to the correctness or incorrectness of such meter, except in case of appeal to the general or quarter sessions; and in case such two inspectors shall not agree, the decision of the inspector of the district to which such meter belongs shall be considered final, except in case of appeal to the general or quarter sessions, as hereinafter provided; and the expenses of the proceedings to be taken under the powers hereby granted shall be

Disputed decision of inspector to be referred to two inspectors of adjoining districts, &c.

ascertained by the justice, who shall also determine by and to whom the same shall be paid, and such expenses may be recovered in any court of competent jurisdiction.

Persons aggrieved may appeal to quarter sessions.

XXII. In England and in such boroughs and towns as aforesaid in Ireland all persons who may think themselves aggrieved by any act or decision of any inspector or inspectors of meters, or by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate, relating to any matter or thing in this Act mentioned or contained, may appeal to the justices of the peace, recorder, or other presiding officer at the then next practicable general or quarter sessions to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days' notice in writing of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made, and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices, recorder, or other presiding officer shall either hear and determine the said complaints at such general or quarter sessions, or, if they think proper, shall adjourn the hearing thereof till the following general or quarter sessions of the peace to be held for such city, borough, or county; and the said justices, recorder, or other presiding officer may, if they or he see cause, reverse or alter such decision, and mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such order or determination, and may also order any such further satisfaction to be made to the party injured as they or he shall judge reasonable, and may also order such costs to be paid by the party complained against to the party appealing, or *vice versâ*, as they shall think reasonable.

This Act and existing powers not to be cumulative.

XXIII. Where any municipal corporation, local board of health, or two or more justices, or any other corporation or person now have powers of appointing inspectors of meters, and they or such inspectors now have powers of stamping, restamping, examining, or testing meters, those powers and the provisions of this Act shall not be cumulative, but after the expiration of nine months after the passing of this Act the provisions of this Act shall supersede all such powers.

Proceedings not to be quashed for

XXIV. No proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or proceeding

whatsoever, into any of Her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding. want of form or removed.

XXV. In England and in such boroughs and towns as aforesaid in Ireland all fees and penalties received and recovered under this Act shall be applied in aid of the stock or fund out of which the expenses of carrying the Act into effect shall be defrayed, and in Scotland all penalties incurred under the provisions of this Act shall be recoverable, with expenses, either before the sheriff of the county, or the magistrates of the burgh or town corporate wherein the same may be incurred or where the offender may reside, or before two or more justices of the peace of such county, at the instance either of the procurator fiscal of court or any person who may prosecute for the same; and the whole penalties, after deducting all charges, and such remuneration to the person prosecuting, as the said justices shall think fit, shall be applied in aid of the funds liable under the provisions of this Act to the cost of providing and maintaining copies of the said models in the place where such penalties shall be awarded; and it is hereby provided that it shall be competent for the said courts respectively to proceed in a summary way and to grant warrant for bringing the parties complained of before them, and upon proof on oath by one or more credible witnesses, or on the confession of the offender, or on other legal evidence, forthwith to give judgment on such complaint without any written pleadings or record of evidence, and to grant warrant for the recovery of such penalties and expenses decerned for, failing payment within fourteen days after conviction, by poinding, or by imprisonment for a period, at the discretion of the court, not exceeding sixty days, it being hereby provided that a record should be preserved of the charge and of the judgment pronounced. As to recovery and application of penalties.

XXVII. In all actions brought against any person for anything done in pursuance of this Act, or in the execution of the powers or authorities thereof, such action shall be laid and brought in the county within which the cause of action shall have arisen, and the defendant or defendants in such action may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the acts were done in pursuance or by the authority of this Act; and if they shall appear to have been so done, or that such action shall have been brought otherwise than as hereinbefore directed, then and in every such case the jury shall find for the defendant or defendants; upon which verdict, or if the plaintiff or plaintiffs shall become nonsuited, or shall suffer a discontinuance of his, her, or their action after the defendant or defendants shall have appeared thereto, or if a Limitation of actions, &c.

verdict shall pass against the plaintiff or plaintiffs therein, or if upon demurrer or otherwise judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have his, her, or their costs, and shall have such remedy for recovering the same as defendants have for recovering costs of suit by law in any other cases.

Plaintiff not to recover after tender of amends.

XXVIII. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act if tender of sufficient amends shall have been made by or on behalf of the party or parties who shall commit such irregularity, trespass, or other wrongful proceeding before such action brought; and in case no tender shall have been made it shall be lawful for the defendant or defendants in any such action, by leave of the court wherein such action shall depend, at any time before issue joined, to pay into court such sum or sums of money as he, she, or they shall think fit, whereupon proceedings, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court.

23 & 24 VICT. CAP. 125.

AN ACT

FOR THE BETTER REGULATING THE SUPPLY OF GAS TO THE METROPOLIS.

28TH AUGUST, 1860.

WHEREAS the following gas companies, (that is to say,) "The Gaslight and Coke Company," "The City of London Gaslight and Coke Company," "The Commercial Gaslight and Coke Company," "The Equitable Gaslight Company," "The Great Central Gas Consumers Company," "The Independent Gaslight and Coke Company," "The London Gaslight Company," "The Phœnix Gaslight and Coke Company," "The Ratcliff Gaslight and Coke Company," "The Surrey Consumers Gas Company," "The South Metropolitan Gaslight and Coke Company," "The Western Gaslight Company (Limited)," "The Imperial Gaslight and Coke Company," or some of them, are respectively incorporated under the authority of parliament, for the purpose of supplying several districts of the metropolis with gas; and the said companies, instead of supplying gas by several mains in the same district, have agreed, as far as possible, each one to confine its supply to a separate district, in order to economise capital and avoid the too frequent opening of the public streets, and, subject to the provisions and restrictions of this Act, it is expedient that such districting should receive the sanction of parliament: And whereas the regulations to which those companies are subject are not uniform: And whereas it is expedient that provision be made for the due regulation of all companies and persons supplying gas within the metropolis: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons,

in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title.

I. This Act may for all purposes be cited as "Metropolis Gas Act, 1860."

10 & 11 Vict. c. 15, incorporated with this Act.

II. "The Gasworks Clauses Act, 1847," (except so far as the provisions thereof are inconsistent with this Act,) is incorporated with and forms part of this Act, and shall apply to the several companies before named or referred to as fully as if the gasworks of the several companies were authorized by this Act; and the expression "undertakers" in the recited Act shall be held to apply to every gas company affected by this Act; but it shall not be lawful for any gas company, by the application of any of their profits or funds, to make up to the prescribed rate, or the rate of 10*l.* per centum per annum where no such rate shall be prescribed, any dividend which shall have been payable more than six years previously; provided that the powers vested in the justices by the said Act shall be exercised by a magistrate.

Companies and persons to whom Act applies.

III. This Act applies to the several gas companies, and to all persons already or hereafter supplying gas within the metropolis, except as hereinafter excepted (*a*).

Interpretation of terms.

IV. In the construction of this Act the following words and expressions have the following meanings, unless excluded by the subject or context; (that is to say,)

The expression "gas company" or "gas companies" means and includes any and every company, and any person or persons, supplying gas within the limits of this Act:

The expression "local authority" includes the metropolitan board of works, vestries, and district boards appointed under an Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis:

The word "inspector" or "inspectors" shall mean any metropolitan gas inspector or inspectors to be appointed under this Act:

The word "consumer" means a person receiving or entitled, in accordance with this Act, to receive a supply of gas from any gas company:

The word "the metropolis" has the same meaning as in the said Act of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty (*b*):

The word "district" means, with respect to every gas com-

(*a*) See sect. 5, and schedule. (*b*) See note (*c*) *infra*.

pany supplying gas wholly or in part within the metropolis, the district, so far as it is within the metropolis, within which the gas company are from time to time authorized to supply gas, and means, with respect to any person or persons not being a gas company, but supplying gas wholly or in part within the metropolis, the district within the metropolis within which he or they shall from time to time as a trade or business supply gas:

The word "street" includes square, court, alley, highway, lane, road, thoroughfare, and public passage or place:

The word "premises" includes public and private messuages and other buildings, lands, and tenements whatsoever:

The word "the gasworks" means the works of the respective gas companies, and the works connected therewith:

The word "rate" includes all rents and other payments for a supply of gas:

The word "meter rent" includes all rents and other payments for the use of gas meters:

The word "magistrate" means any police or stipendiary magistrate acting in and for the district of the metropolis in which the matter referred to him arises, and in the city of London and the liberties thereof shall mean any justice of the peace for the city of London and the liberties thereof:

The words "common gas" shall mean gas of an illuminating power hereinafter defined of not less than twelve candles:

The words "cannel gas" shall mean gas of an illuminating power hereinafter defined of not less than twenty candles.

Limits of Act.

V. The limits of this Act shall be the metropolis (*c*): Provided always, that this Act and the several clauses and provisions thereof shall not extend or apply, or be construed to extend or apply to the several gas companies set forth and enumerated in the schedule annexed to this Act; provided also, that the districts severally specified and described in the Acts and instrument of incorporation respectively mentioned in the said schedule, or within which the said companies or any of them are now supplying gas, (notwithstanding the said districts, or any portion thereof, are or may be within the limits of the metropolis as defined by this Act,) shall not be included or deemed to be included in the expression "the metropolis," or any extension thereof which may hereafter be made, under the provisions of the hereinbefore-mentioned Act of the eighteenth and nineteenth Victoria, chapter one hundred and

(*c*) This seems to mean exclusive of the city. See sect. 56, directing payment of expenses of Act out of funds raised from the *vestries* and *district boards*, and definition of local authority by sect. 4.

twenty; provided also, that if the said companies or any of them shall supply gas in parts of the metropolis other than those within their respective districts as defined in the said schedule, then the provisions of this Act shall be held to apply to such companies respectively so far only as regards such extended limits as may be within the metropolis.

Sanctioning assignment of districts to gas companies to be subject to triennial revision.

VI. The limits of each of the said companies shall be the respective districts supplied with gas by such companies as the same are defined upon four duplicate maps, signed by the Right Honourable Thomas Henry Sutton Sotheron Estcourt, and which maps have been severally deposited with the respective clerks of the peace for the counties of Middlesex, London, Surrey, and Kent; provided that at the expiration of three years next after the passing of this Act, and of every three years thereafter, Her Majesty's principal secretary of state for the home department for the time being may, either upon the application and with the consent of any two or more of the said gas companies whose districts adjoin one another, make any alteration in the boundaries of such districts, or, upon the application of any local authority, or upon the requisition of not less than twenty gas consumers within any district or districts proposed to be affected, and upon proof to his satisfaction being given that any of the said gas companies are not in a condition adequately to supply with gas their respective districts, or have substantially failed to fulfil the obligations imposed by this Act, may make such alterations in the boundaries of such districts, or admit any new company respectively, as he thinks proper; and all such alterations shall be certified on one or more maps, to be signed by the said secretary of state, and deposited with one or more of the said clerks of the peace; and such last-mentioned map or maps shall be binding on all parties, and the provisions of this Act shall be held to apply to the several districts when so altered, and to the several companies affected thereby, as fully and effectually as if no alteration in such districts had been made, and no other company or person than the company to whom such limits are for the time being assigned or shall be hereafter assigned shall supply gas for sale within the said limits, unless authorized by parliament so to do; provided that before proceeding to consider the necessity for altering any of the said districts the said secretary of state shall cause at least one month's notice to be given of such application to all parties interested therein or affected thereby, and such notice shall state the day and hour when and the place where such application will be considered; and notices to be given to any gas company shall be left with the secretary or some other principal officer of the company, and notices to be given to any local authority shall be left with the clerk or some other principal officer of the said local authority.

VII. If at any time complaints as to the quantity or quality of the gas supplied by any company be made to the said secretary of state by memorial in writing from the Metropolitan Board of Works, or any vestry or district board of works, signed by their clerks respectively, or not less than twenty inhabitant householders paying rates for and supplied with gas by any such company, it shall be lawful for the said secretary, at any time within one month after the receipt of such complaint, to appoint a competent person as inspector, to inquire into and concerning the grounds of such complaint, and to report to the said secretary thereon. On complaint as to quantity and quality, secretary of state may appoint a person as inspector to inquire and report.

VIII. The inspector so appointed as aforesaid shall give notice of his appointment in writing to the company, and at any time after twenty-four hours from the time of his giving such notice as aforesaid he shall have power to inspect and examine the gasworks of the company, and to inquire into and concerning the grounds of such complaint, and the company and their officers shall afford all reasonable facilities for such inspection, examination, and inquiry. Power of inspector so appointed.

IX. Any person obstructing such inspector in the due prosecution of such inspection, examination, or inquiry shall forfeit and pay any sum not exceeding 10*l.* Penalty on obstructing inspector.

X. If after receipt of such report it shall appear to the said secretary that the said complaint is well founded, the said secretary shall give notice thereof in writing to the company. Notice if complaint well founded.

XI. After the receipt of such notice the company shall and they are hereby required, within a reasonable time, to remove the grounds of such complaint. Company to remove ground of complaint.

XII. Every gas company shall in all things obey the orders of the said secretary made in pursuance of this Act, and in default of their so doing they shall be liable to a penalty not exceeding 50*l.* for each offence. Gas companies to obey orders of secretary of state.

XIII. All the costs, charges, and expenses of and incident to any inquiry and decision of the said secretary of state under this Act shall from time to time be borne and paid by such parties as the said secretary of state shall direct, and such decision may, upon an *ex parte* application, be made a rule of any of Her Majesty's superior courts of law at Westminster. Cost of altering district.

XIV. Every gas company from time to time supplying gas within any district shall, as to any premises or street within such district not already supplied with gas, and which shall Gas companies to provide pipes, and

supply gas and meters at prescribed rents.

lie within fifty yards of any existing mains, at their own expense, on being required by the owner or occupier of any premises within the district or in part within the district, who shall contract for not less than two years to pay gas rates in respect of such supply to an amount equal to twenty per cent. upon the outlay, provide and lay all proper and sufficient communication, service, and other pipes up to the premises of such owner or occupier, to communicate with the gas company's mains, and shall, if so required by the owner, occupier, or local authority, furnish him or them, at the rate prescribed by this Act, with a supply of gas for the purpose of being used in or on the premises, or for lighting the street, and if so required by the owner or occupier, furnish him with one or more meters, for ascertaining the quantity of gas consumed; provided that the gas company shall not be bound to supply more than one meter for each consumer occupying a separate dwelling or apartment, nor any meter exceeding a five-light meter; provided also, that the meter rent which the said company shall be entitled to claim for such meter shall not exceed ten per cent. on the net cost of such meter; provided that it shall not be lawful for any company not charging a meter rent on the 1st day of January, 1860, to charge such rent within their district until after the 1st day of January, 1862.

Security to be given to gas company, if required.

XV. Provided, that the owner or occupier, if so required in writing by the gas company or any of their officers, shall, before he is entitled to have the pipes provided and laid, or to have a supply of gas or of meters furnished, give to the gas company such security for the payment of the rate for the gas to be supplied to him, and of the meter rent for every meter to be supplied to him, as he and the gas company agree on.

Differences as to security to be determined by a magistrate.

XVI. Provided, that if the owner or occupier and the gas company cannot agree thereon, the security to be given shall be determined by a magistrate; and any single magistrate shall, on the application of the owner or occupier and the gas company, or either of them, determine the nature and amount of the security to be given; and the security may, as the magistrate thinks fit, be the deposit with the gas company, or with any person approved by the magistrate, or the prepayment to the gas company of a sum of money or any other security which the magistrate thinks sufficient and reasonable; and the determination of the magistrate shall be binding on all parties, and final: Provided that if the security be the deposit with the gas company of a sum of money, the gas company shall pay interest thereon to the consumer at such rate as the magistrate shall determine.

Penalty on gas com-

XVII. If the gas company, not being entitled to require or not having required any security, wilfully fail for seven days

after being thereunto required in writing by the consumer, or where the security agreed on or determined by the magistrate is given, shall wilfully fail for fourteen days thereafter to provide and lay all proper and sufficient communication, service, and other pipes, or to furnish a supply of gas, or to furnish any meter, pursuant to the provisions of this Act, then and in every such case the gas company shall, on a summary conviction before a magistrate, forfeit and pay to the consumer not exceeding 40*s.* for every day after the expiration of seven or fourteen days respectively during which the failure continues.

Company failing to provide pipes or supply of gas or meters.

XVIII. Provided, that every private consumer shall, if so required in writing by the gas company, consume the gas by meter, but any consumer may, if he thinks fit, provide his own meter.

Gas to be consumed by meter, if required by companies.

XIX. Subject to the provisions of this Act, every gas company, from time to time, may enter into any contract with any owner, occupier, or local authority for all or any of the following purposes; that is to say, for supplying him or them with gas, and with pipes, burners, meters, lamps, lamp posts, and other apparatus, and for the repair and cleansing and for the lighting and extinguishing thereof, in such manner and on such terms and conditions as the parties agree.

Gas companies may contract for supply.

XX. Provided, that notwithstanding its being required by any Act of parliament or otherwise that the gas company's contracts shall be under seal, every contract of the gas company entered into in accordance with this Act shall, without seal, be binding on them, if the contract be signed by at least two of their directors, or by their secretary or other officer, by the authority of at least two of their directors.

Contracts valid though not under seal.

XXI. Provided, that no contract for any of those purposes shall contain any term or condition contrary to any of the provisions of this Act, or for giving in case of difference the sole arbitrament thereon to the gas company, or any officer or person who is or has been employed by them, or who may have a pecuniary interest in such company, or for requiring any notice by a consumer discontinuing his supply of gas or meter, which shall make him liable to pay more than one month's rate or meter rent after the time of the service of the notice, or which shall entitle the gas company, except for breach of any of the provisions of this Act, to discontinue any supply of gas by less than one month's notice in writing to the consumer, unless the rate due for gas shall be in arrear, in which case three days' notice in writing to the consumer shall be sufficient.

Restrictions on contracts with gas companies.

as companies to light streets when required by local authority.

XXII. The gas company shall well and effectually light all public lamps in all streets which they are required by the local authority to light, and shall, according to the terms of their contract, supply to the local authority so much gas as they require for their public lamps; provided that the gas company shall not be compelled to light any street with lamps at a greater distance from each other than seventy-five yards.

Local authorities may provide lamp posts and lamps.

XXIII. The local authority may provide and keep in repair their own public lamp posts and lamps, and apparatus connected therewith, and in case of their electing to burn by meter, light and extinguish the lamps, and defray the expenses thereof.

Service pipes to be fully charged with gas.

XXIV. Every gas company shall, unless prevented by necessary repairs or unavoidable accident, at all times keep all their branch or service pipes fully charged with gas, and the stop-cocks so turned as not to prevent the branch or service pipes from being at all times filled with gas.

Illuminating power and purity of gas.

XXV. The quality of the common gas supplied by any gas company shall be, with respect to its illuminating power, at a distance as near as may be of one thousand yards from the works, such as to produce from an Argand burner having fifteen holes and a seven-inch chimney, consuming five cubic feet of gas an hour, a light equal in intensity to the light produced by not less than twelve sperm candles of six to the pound, each burning one hundred and twenty grains an hour, and the quality of cannel gas supplied by any gas company shall, with respect to its illuminating power at the distance aforesaid, be such as to produce from a batswing or fishtail burner, consuming five feet of gas per hour, a light equal in intensity to twenty such sperm candles, and each such gas shall, with respect to its purity, be so far free from ammonia and sulphuretted hydrogen that it shall not discolour either turmeric paper or paper imbued with acetate or carbonate of lead, when those tests are exposed to a current of gas issuing for one minute under a pressure of five-tenths of an inch of water, and shall not contain more than twenty grains of sulphur in any form in one hundred cubic feet of gas: provided that any gas company, and the local authorities of the district supplied by such company, shall be at liberty to agree upon any other or different test by which to ascertain the purity of the gas, or to vary the amounts of ammonia or sulphur in any form hereinbefore allowed, and thereupon the company shall be thenceforth liable to have the purity of their gas tested in the manner so prescribed.

Penalty for deficient illuminating power or impurity.

XXVI. If the gas supplied by the gas company be at any time of less illuminating power or of less purity than according to this Act it ought to be, the gas company shall for every such offence, on a summary conviction before a police magistrate, forfeit a sum not exceeding 50*l.*, and also, in addition to that penalty, and whether that penalty be recovered or not, a further sum of 10*l.* for every day after notice in writing from the local authority during which the offence continues: Provided that such police magistrate shall not convict under this section, if it shall be proved to his satisfaction that such defect of gas was occasioned by any unavoidable cause or accident.

Appointment by local authority of examiner of gas.

XXVII. Every local authority taking any supply of gas according to this Act shall provide all proper and sufficient apparatus, machinery, and instruments for testing the illuminating power and purity of the gas, and from time to time shall appoint, and out of any funds applicable by them for their local purposes may pay, a chemical examiner or gas engineer, or other competent person, to be an examiner for the purposes of this Act; and every gas company shall, within six months after the passing of this Act, cause to be erected in some convenient place, as near as may be to one thousand yards from their works (such place, in case of dispute between the company and the local authority, to be fixed by a police magistrate upon the application of either party, after hearing the parties thereon), an experimental meter furnished with a suitable burner, capable of consuming five cubic feet of gas per hour, with other necessary apparatus for testing the illuminating power of the gas.

Examination of gas, and report thereon.

XXVIII. The examiner shall, on giving three hours' notice to the secretary or engineer of the company, have access at all times to such experimental meter, and when and so often as is necessary or as he is so directed by the local authority appointing him shall examine the illuminating power, and the purity of the gas supplied, and shall present to the local authority, so often as they require, a report stating the number of examinations on which the report is founded, and the maximum, minimum, and average illuminating power and purity, or the illuminating power and purity from day to day or at longer intervals of the gas supplied during the whole period to which the report relates, with such other information and remarks thereon as may be deemed necessary.

Two or more local authorities may join in the appointment.

XXIX. Provided, that two or more local authorities, if they think fit, may join in providing the apparatus, machinery, and instruments, and in appointing and paying the examiner, and he shall make his reports to every local authority so joining in appointing and paying him.

Complaint to a magistrate as to supply of gas.

XXX. The examiner, on payment to him of a fee of 10*s.* 6*d.* by any consumer, shall, at his request, examine and report to him on the illuminating power and the purity of the gas supplied as hereinbefore mentioned; and any consumer may make complaint to any magistrate with respect to the illuminating power or purity of the gas supplied to the complainant, and the magistrate may entertain and hear the complaint, and proceed thereon according to the provisions of this Act.

Hearing on report.

XXXI. Any magistrate may direct that notice be given to the complainant and the gas company to appear and be heard on the complaint, at such time as he appoints, and each party shall thereupon appear and may be heard before a magistrate, by themselves, their counsel, attornies, or agents.

Order on hearing.

XXXII. Where on the hearing, and whether or not the gas company have appeared, it appears to the magistrate that the complaint or any part thereof is well founded, he shall make an order declaring that the same is well founded, and ordering the gas company to pay any penalty or penalties thereby incurred, and to remove within a reasonable time the grounds of complaint, and he may by the order direct that any specific acts shall be done by the gas company for removing the grounds of complaint, and may make any order as to costs; and all orders so made shall be final and binding on all parties.

Gas company to obey order.

XXXIII. Where the gas company are served with any order so made they shall, within the time limited by the order, remove the grounds of complaints thereby declared to be well founded, and pay the penalty or penalties, and the damages (if any) and costs (if any) thereby ordered to be paid by them.

Gas companies to afford facilities for examination under this Act.

XXXIV. The gas company, and their officers, agents, and servants, and where there is any complaint made, the complainant, shall afford to the examiner appointed by the local authority all reasonable facilities for the respective inspection, examination, and inquiry; and every person obstructing any such examiner so appointed in the exercise of his duties under this Act shall for every such offence forfeit not exceeding 10*l.*

Limit of charge for gas and meters.

XXXV. After the 31st day of December, 1860, no gas company shall, except under existing contracts, demand or take for any gas or five-light meter supplied by them any sum of money exceeding the rate or meter rent by this Act authorized.

Determination of ex-

XXXVI. All contracts made or existing before the 1st of January, 1860, between any of the gas companies included in

this Act and any local authority, for or relating to the supply of gas, shall terminate on the 1st day of February, 1862, and thereafter the provisions of this Act in all particulars shall apply to such company; provided that from the time of the passing of this Act until the said 1st day of February, 1862, the provisions of this Act relating to price, purity, and illuminating power of gas, shall not apply to any such company, unless such company shall elect to adopt them. Existing contracts.

XXXVII. The gas company shall not charge a higher price by the one thousand cubic feet for gas supplied to any local authority than the lowest rate by the one thousand cubic feet from time to time charged by them to any private consumers, otherwise than by special contract in writing, in the district supplied by the gas company. Limit of charge for gas supplied to public lamps.

XXXVIII. If any difference arise between the local authority and the gas company with respect to any alteration in the test, or to the rate to be charged for gas supplied or for lighting any public lamp, the difference shall be referred to and be determined by arbitration in the manner prescribed by the "Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration (*a*). Difference to be settled by arbitration.

XXXIX. In case any consumer leave the premises where gas was supplied to him without paying to the gas company the rate or meter rent due from him, the gas company shall not require from the next tenant of the premises payment of the arrears so left unpaid, unless the incoming tenant agreed with the defaulting consumer to pay the arrears; but the gas company shall, notwithstanding any such arrears, in the absence of collusion between the outgoing and incoming tenant, supply gas to the incoming tenant, as required by this Act, on being required by him so to do. Incoming tenant not to pay arrears of outgoing tenant, unless by express agreement.

XL. No company shall advance the price of gas above the rate taken by such company on the 1st day of January, 1860, whenever such rate is at or above 4*s.* 6*d.* per one thousand cubic feet, unless there has been such increase in the cost of gas, or any other circumstances affecting the company, as will warrant such advance: Provided always, that before raising the gas rate in any district the gas company supplying such district shall give notice of their intention to the local authorities of the district and in some newspaper circulating within the district for two consecutive weeks at least one month before Appeal by consumers to home secretary on rise of price of gas.

(*a*) See as to settlement of questions of disputed compensation by arbitration, 8 Vict. c. 16, the 128th and following sections, to 134th inclusive.

such alteration in the gas rate shall be made; and in case any local authority shall, within such month, dissent from such alteration, it shall be determined by arbitration in the manner hereinbefore mentioned whether such alteration shall be allowed: Provided always, that no gas company shall charge for common gas supplied by them any sum exceeding 5*s.* 6*d.* for every one thousand cubic feet, or for cannel gas any sum exceeding 7*s.* 6*d.* for every one thousand cubic feet: Provided also, that any company shall be at liberty to change the kind of gas from time to time supplied by such company, whether common or cannel gas, on giving three months' notice of their intention so to do; and upon the expiration of such notice the company shall thenceforth supply gas pursuant thereto under the provisions of this Act until any like notice shall be given for a further change; and when the company shall change the supply from cannel gas to common gas, the rate shall be reduced so as not to exceed 4*s.* 6*d.* per thousand cubic feet, except under the circumstances and in the manner hereinbefore set forth.

Home secretary may issue form of accounts to be filled up by gas companies.

XLI. The said secretary of state may at any time issue a form of accounts to be filled up by each of the said gas companies, and such accounts shall state precisely the amounts of the capital of each company, and the Acts of parliament or other authority under which the same is raised, and such other information as the said secretary may require, in order to enable him to ascertain the actual state and condition of the concerns of such company; and every gas company shall, after receiving notice in writing signed by the said secretary of the form so required by him to be filled up, within two months after the general meeting of the company fill up and forward to the said secretary an annual statement of accounts in the form so prescribed, and any company which shall fail to furnish such account shall be liable on conviction before a magistrate to forfeit any sum not exceeding 50*l.*; and such statement shall be laid by the secretary of state before both houses of parliament every year.

Gas companies to cause maps of their districts to be made.

XLII. Every gas company shall within one year after the passing of this Act cause a map to be made of the district within which their mains or district mains then lie, on a scale not less than six inches to a mile, and shall cause to be marked thereon the line of all their then existing mains and district mains, and shall once in every year correct such map and make such additions thereto as will show the line of all their then mains and district mains as aforesaid.

[redacted] to deposited

XLIII. Every map, or a copy thereof, so made by or for each company, with the date expressed thereon of the last

time when it was so corrected, shall be deposited, certified by their secretary or clerk by writing under his hand to be a true copy thereof, with the respective clerks of the peace for the counties in which such mains lie, and who are hereby required to receive and keep in safe custody the same; and such maps so deposited shall at all reasonable times be open to the inspection of all local authorities and consumers, and their respective agents, and they respectively may take copies of or extracts from the same; and every gas company wilfully failing to comply with any of the requirements of this Act with respect to maps, and every person having charge of such maps who shall refuse to allow any person to inspect and take copies of or extracts from such maps, shall for every such offence forfeit a sum not exceeding 10*l.* Inspection of the maps.

XLIV. Every clerk of the peace with whom any map shall be deposited under the provisions of this Act may charge and take the sum of 1*s.* for every inspection of such map, and the further sum of 2*s.* 6*d.* for every extract from or copy taken of such map. Charge for inspection of map.

XLV. If and whenever it appears to the secretary of state that any of the provisions of this Act have been violated or not complied with on the part of any gas company, or that the gas company are acting in a manner unauthorized by law, and if it appear to him that it would be for the public advantage that the gas company should be restrained from so acting, or compelled to do any act for remedying the wrongful act done by them, the secretary of state may certify the same in writing to Her Majesty's attorney-general, and thereupon he, if he be so advised, shall proceed by information, bill, or action, or other such proceeding at law or in equity, as the case requires, to restrain the wrongful acting or to compel the doing of the acts for remedying the wrongful acts: Provided always, that the secretary of state shall not give the certificate at a period exceeding one year after the committing of the offence specified in the certificate. Secretary of state may direct proceedings by the attorney-general against gas companies.

XLVI. Every penalty imposed by this Act, the recovery and application of which is not otherwise specially provided for by this Act, shall be recovered on summary conviction before a magistrate, and be enforced, accounted for, and paid to the receiver of the metropolitan police district, and shall be apportioned in the same manner as penalties or fines, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are by the Act of the third year of Her present Majesty, for regulating police Recovery and application of penalties.

courts in the metropolis (*b*) directed to be recovered, enforced, accounted for, paid, and applied; and every order or conviction of any magistrate in respect of any such penalty shall be subject to the like appeal, and upon the same terms, as is by that Act provided in respect of any order or conviction of any magistrate; and every magistrate by whom any order of conviction is made under this Act shall have the same power of binding over the witnesses examined, and the witnesses shall be entitled to the same allowance of expenses, as they would be entitled to in case the order, conviction, and appeal were made under that Act.

Jurisdiction of magistrates for purposes of Act.

XLVII. Every magistrate shall, for the purposes of this Act, have full jurisdiction and full powers and authorities over the parties respectively, and with respect to making orders on the parties respectively, and otherwise, and as to costs, and may issue every such summons, warrant, and other process, and may take such other proceedings as he thinks requisite; and the service of any summons, notice, order, or other process in the matter on such person, or in such manner as a magistrate directs, shall be good service thereof; and every magistrate may proceed singly in the execution of this Act in such manner as he thinks proper.

For the protection of water companies.

XLVIII. Nothing in this Act contained shall extend or be construed to extend to authorize or empower any gas company to interfere with or abridge any of the rights or privileges of any company established for the supply of water to the inhabitants of any parish or place within the metropolis; and every gas company shall be answerable for any damage, spoil, injury, or mischief which shall be done to any of the pipes, works, or property of any such water company, or which shall or may be sustained by such water company by reason or in consequence of any act, matter, or thing to be done or executed by such gas company, or any of their servants, agents, or workmen.

For laying pipes to convey gas.

XLIX. Whenever any gas company, or their servants, agents, or workmen, shall dig or sink any trench for laying any new mains or pipes, other than service pipes, for the conveyance of gas or other apparatus near to which any pipe belonging to any water company for conveying water, or any branch or service pipe for the supply of water to any dwelling house or buildings, shall be laid, such gas company, their servants, agents, or workmen, shall give four hours' previous

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(*b*) See Act for further improving the police in and near the metropolis, 2 & 3 Vict. c. 47, ss. 29 and 77; and 2 & 3 Vict. c. 71, s. 47.

notice thereof in writing to the manager or chief clerk, or secretary or engineer, of such water company, such notice to be delivered at the principal office of the company between the hours of ten in the morning and four in the afternoon, and shall, under the inspection of the manager or chief clerk, secretary or engineer for the time being of such water company, protect and secure every such water pipe from any injury, and shall also repair any damage that shall be done to such pipe, and in default of repairing such damage the gas company shall for each such default forfeit and pay to the secretary for the time being of such water company, for the use of the said water company, any sum not exceeding 5*l.*, and also the costs and expenses which shall have been incurred by the said water company in protecting and securing any such water pipe, or in repairing or making good any injury that may have been done thereto by the means aforesaid, such costs and expenses to be ascertained by any justice, and to be recovered in the same manner as any expenses or penalty under this Act may be recovered.

Mode of laying pipes.

L. All pipes hereafter to be laid by any gas company for the conveyance of gas shall be laid at the greatest practicable distance from the nearest part of any pipe then laid down by or by order of any water company for the conveyance of water, and wherever the width of the carriageway or footpath will allow thereof shall be laid at the distance of four feet at least from the nearest part of any such water pipe, unless in cases where it shall be unavoidably necessary to lay the gas pipe across or nearer to any water pipe, in which case the said gas pipe shall, wherever practicable, be laid over and above the said water pipe at the greatest practicable distance therefrom, and shall form therewith a right angle, or as near thereto as the situation will admit; and in every such case the said gas pipe so crossing the said water pipe shall be at least nine feet in length, so that no joint of any gas pipe shall be nearer to any water pipe than four feet at the least, where the width of the road, street, square, market place, lane, alley, passage, court, or other place will admit; and every such gas pipe so crossing the water pipe shall for the whole length thereof be sufficiently bedded in with good sound clay or other fit materials of a proper consistence, and well worked and rammed into the trench all round the said gas pipe, and in laying down any such gas pipe the gas company shall use such joints as are for the time being of the most improved description for preventing the leakage of gas, and shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such

trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also, wherever practicable, lay and well and sufficiently bed each joint of the main gas pipes and also the joints or screws of the branch or service gas pipes connecting with the main gas pipes, and also the joints of the service or branch pipes for conveying the gas from the main gas pipes to the houses and other buildings, and all other joints, inlets, apertures, or openings which are or shall or may be made in any of the main gas pipes belonging to the gas company, in such manner and of such material as shall, as far as reasonably practicable, prevent leakage.

To prevent further contamination of water by gas (*a*).

LI. Whenever the water which shall be supplied by any water company shall be contaminated or affected in any way whatsoever by the gas of any gas company, such gas company shall, within twenty-four hours next after notice thereof in writing, signed by any one of the directors, or by the secretary for the time being of such water company, or by any person using the water of such water company, and left at the office of such gas company, cause measures to be taken effectually to prevent such gas from contaminating or affecting the water of such water company; and in case such gas company shall not within forty-eight hours next after any such notice so left as aforesaid use all reasonable means to effectually remove the cause of such complaint, and prevent all such contamination whereof notice shall be given as aforesaid, then and in every such case such gas company shall, on each complaint whereof notice shall be given as aforesaid, forfeit and pay to the secretary of such water company, for the use of such water company, the sum not exceeding 10*l.* for each day during which the water supplied by such water company shall remain contaminated or affected by the gas of such gas company; and every such penalty or forfeiture may be recovered for the use of such water company in the same manner as any other penalty or forfeiture imposed by this Act may be levied and recovered.

For ascertaining if the water is contaminated.

LII. And whereas it may become a question upon such complaint as aforesaid whether or not the water supplied by any water company within the metropolis be contaminated or affected by the gas of the gas company: Be it enacted, that in every such case it shall be lawful for any such water company to dig to and about and to search and examine the

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(*a*) See penalties for fouling water in Gasworks Clauses Act, 10 Vict. c. 15, ss. 21, 22, and 23; and s. 23 *et seq.* of Nuisances Removal Act, 18 & 19 Vict. c. 121.

mains, pipes, conduits, and apparatus of the gas company adjacent to the pipes of such water company for the purpose of ascertaining whether or not such contamination proceed or be occasioned by the gas of such gas company, giving twenty-four hours previous notice in writing, signed by one of the directors or by the secretary for the time being of such water company, and left at the head office of such gas company, of the intention of such water company so to dig, search, and examine as aforesaid, and of the time and place or places when and where such digging, search, and examination is intended to be made; and if it shall appear that the said water has been contaminated, and that there has been any escape of gas whereby such contamination has been produced, then and in every such case the costs and expenses of the said digging, search, and examination, and of the repair of the street, road, or place which shall be taken up or disturbed, shall be borne and paid by such gas company, which costs and expenses shall be ascertained and determined if necessary by any justice, and may be levied and recovered in the same manner as any penalty or forfeiture imposed by this Act may be levied and recovered: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any escape of gas from any of the mains, pipes, or conduits of the gas company to which such notice shall have been given, then and in every such case the water company by whom or on whose behalf such examination and search shall have been made shall bear and pay all the costs, charges, and expenses of and incident to such examination and search, and shall also make good to such gas company any damage which may be occasioned to their mains, pipes, conduits, or apparatus by such search, and also any injury or damage which may be done in or about any of the streets, roads, or places which shall be broken up or disturbed in such search, the amount of such damage to be ascertained and determined if necessary by any justice, and to be levied and recovered in the same manner as any penalty or forfeiture under this Act may be levied and recovered.

Appropriation of penalties in the city of London.

LIII. All penalties or sums of money ordered and adjudged within the city of London and the liberties thereof to be paid under this Act, and not otherwise appropriated, shall be payable to the chamberlain of the city of London, in aid of the expenses of the police of the said city.

Saving rights of metropolitan board of works, vestries, and others.

LIV. Nothing in this Act contained shall avoid, prejudice, or impair any of the powers now exercised by or vested in the metropolitan board of works, or in the commissioners of sewers of the city of London and the liberties thereof, or any

powers now vested in any local authority within the metropolis, or any powers now exercised or possessed in respect of the manufacture or supply of gas within the metropolis by any railway company, or by any other person or persons making or supplying gas for his or their own use, and not making or supplying gas to the public as a trade or business: Provided that if the said local authority shall refuse or delay their consent to any company to lay down mains or pipes in accordance with the provisions of this Act (*c*), it shall be lawful for the said secretary of state under his hand to authorize the same to be laid down without such consent; and after the date of the application by such company to the said secretary of state for such consent no penalty shall be incurred by any default of such company, so far as it is occasioned by such refusal only.

Saving general jurisdiction of courts of law and equity.

LV. Provided, that no special remedy or provision for giving relief to any person given by this Act shall prejudice or diminish the general jurisdiction of any of Her Majesty's superior courts of law or equity over or with respect to the acts or defaults in respect of which the special remedies or provisions are so given.

Expenses of Act.

LVI. The costs, charges, and expenses of and incident to the passing of this Act, and preliminary thereto, shall be paid by the metropolitan board of works (*d*), out of such funds as may be and shall be levied by their authority from the several vestries and district boards, in proportion to their annual rateable value, and such amount shall be included in the precept of the metropolitan board under the authority of the Act of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis.

Expenditure of local authorities under this Act.

LVII. All the expenditure from time to time made or incurred by any local authority under the authority of this Act may and shall be defrayed by the local authority out of any rate raised under the provisions of the Act of the session of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty, for the local management of the metropolis.

(*c*) See as to consent of vestries and district boards in case of works by companies, 18 & 19 Vict. c. 120, s. 109, *et seq.*, *ante*, p. 76.

(*d*) Held, that a parliamentary agent who had been employed by certain persons to obtain this Act could not maintain an action against the metropolitan board to recover his costs attending the passing of the Act; *Wyatt* v. *Metropolitan Board of Works*, 31 L. J. (N. S.) C. P. 217.

SCHEDULE to which Fifth Section of the foregoing Act refers.

Name of Gas Company.	Special Act or Instrument of Incorporation.	District.
The Crystal Palace District Gas Company.	The Crystal Palace District Gas Company's Act, 1858.	The district defined by their said special Act.
The Woolwich, Plumstead, and Charlton Consumers Gas Company.	The Woolwich, Plumstead, and Charlton Consumers' Gas Act, 1855.	The district defined by their said special Act.
The Woolwich Equitable Gaslight and Coke Company.	The Woolwich Equitable Gas Company's Act, 1855.	The district defined by their said special Act
The Wandsworth and Putney Gaslight and Coke pany.	The Wandsworth and Putney Gas Act, 1856.	The district defined by their said special Act.
The Brentford Gas Company.	The Brentford Gas Act, 1858.	The district now actually supplied by the company.
The Victoria Docks Gas Company.	The Victoria Docks Gas Act, 1857.	The district defined by their said special Act.
The Eltham Gaslight and Coke Company, Limited.	Articles of association under the Joint Stock Companies Act, 1856.	The parish of Eltham.
The West Ham Gas Company.	The West Ham Gas Company's Act, 1856.	The district defined by their said special Act.
Mitcham, Merton, and Tooting Gas Company.	Articles of association under 7 & 8 Victoria, cap. 110.	The parishes and villages of and adjacent to Mitcham, Merton, and Tootin .

23 & 24 VICT. CAP. 146.

AN ACT

TO AMEND THE ACT FOR REGULATING MEASURES USED IN SALES OF GAS.

28TH AUGUST, 1860.

WHEREAS delays have occurred in preparing the models of measures, according to the provisions of an Act passed in the last session of parliament, intituled "An Act for regulating Measures used in Sales of Gas," and it is expedient to defer the time when several of the provisions of the said Act come into operation, and further to amend the same: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

22 & 23 Vict. c. 66.

Calculation of time specified in recited Act.

I. Except as to things done before the passing of this Act under the authority of the said Act, where in the said Act anything is required to be done within a specified time after the passing of the same, such time shall be calculated as if the 13th day of October, 1860, had been the date of the passing of the said Act: Provided always, that notwithstanding anything in the said Act contained, the said Act shall not come into operation in any county of England until the magistrates of such county in quarter sessions, or in any county in Scotland until the commissioners of supply of such county, or in any county of Ireland until the grand jury of such county, shall have resolved to bring such county under the operation of the Act (*e*).

(*e*) So much of this section as relates to magistrates bringing the county under the operation of the Act is repealed as to the metropolis. See sect. 2 of 24 & 25 Vict. c. 79, *post*.

II. This Act and the recited Act shall be construed together as one Act, and all penalties and forfeitures incurred under the provisions of either Act shall be sued for and recoverable in all counties, ridings, or divisions in England and Ireland before two or more justices of the peace at petty sessions, or before the mayor or other chief magistrate of any city, borough, town, or place. Construction of Acts, and recovery of penalties.

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24 & 25 VICT. CAP. 79.

AN ACT

TO AMEND THE METROPOLIS GAS ACT.

6TH AUGUST, 1861.

WHEREAS it is expedient to extend the powers in relation to gas vested in the metropolitan board of works (*a*) by "The Metropolis Gas Act, 1860:" Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. All powers conferred on the justices of the peace of any county in general or quarter sessions assembled (*b*), by the Act passed in the twenty-second and twenty-third years of Powers conferred on justices of the peace by

(*a*) The metropolitan board are by the 4th section of that Act, included in the expression "local authority," and are by sect. 7 empowered to present a memorial to the secretary of state, complaining of the quantity or quality of the gas supplied to every lamp, only with a view to the appointment of and receiving report by the inspector. The other duties cast upon the local authority by the Act seem to appertain only to the vestries and district boards.

(*b*) The 22 & 23 Vict. c. 66, s. 4, defines the duties of justices in general or quarter sessions with respect to determining the number of copies of the models of gasholders for the testing of meters, providing copies verified and stamped, with stamps for stamping meters, and fixing places where they shall be deposited, and the appointment of inspectors of meters, and allotting them districts. The 9th section requires the justices to appoint the time and place at which inspectors shall

22 & 23 Vict. c. 66, as amended by 23 & 24 Vict. c. 146, in so far as relates to the metropolis, transferred to the metropolitan board of works.

the reign of Her present Majesty, chapter sixty-six, intituled "An Act for regulating Measures used in Sales of Gas," as amended by an Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-six, and intituled "An Act to amend the Act for regulating Measures used in Sales of Gas," shall, in so far as relates to the metropolis, as defined by an Act passed in the session holden in the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty, and intituled "An Act for the better Local Management of the Metropolis," be transferred and vested in the metropolitan board of works, and so many of the said powers as are conferred by section four of the said Act of the twenty-second and twenty-third years of the reign of Her present Majesty, shall be exercised by such board within two months after the passing of this Act, and so from time to time thereafter as in the said Act mentioned, and all expenses incurred by the said board in pursuance of this Act shall be defrayed by them out of rates leviable by them within their jurisdiction exclusive of the city of London (*c*).

So much of sect. 1 of 23 & 24 Vict. c. 146, as respects the metropolis, repealed.

II. So much of the said Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-six, as provides that, notwithstanding anything contained in the said Act for regulating measures used in sales of gas, the said Act shall not come into operation in any county of England until the magistrates of such county in quarter sessions shall have resolved to bring such county under the operation of the Act, shall be repealed so far as respects the metropolis as hereinbefore defined.

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attend with the copies of models at each of the towns and districts within their jurisdiction, &c. The 22nd section gives an appeal to the general or quarter sessions to persons aggrieved by the acts of inspectors, or by the order of any justice of the peace.

(*c*) By the 22 & 23 Vict. c. 66, s. 7, these expenses are to be paid, in the city of London, out of the consolidated rate raised by the commissioners of sewers for the city.

25 & 26 VICT. CAP. 66.

AN ACT

FOR THE SAFE-KEEPING OF PETROLEUM (*a*).

29TH JULY, 1862.

WHEREAS it is expedient to provide for the safe-keeping of petroleum and certain products thereof that are dangerous to life and property, from their properties of giving off inflammable vapours at low temperatures: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Definitions: "Petroleum:" "Borough:"

I. "Petroleum," for the purposes of this Act, shall include any product thereof that gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer:

"Borough" shall in England mean any place for the time being subject to the provisions of the Act of the session holden

(*a*) The 54th section of the former Metropolitan Building Act, the 7 & 8 Vict. c. 84, which is excepted from the provisions repealed by the present Building Act, the 18 & 19 Vict. c. 122, prohibits the erection, &c. of buildings within a certain distance of buildings used for dangerous businesses, such as the manufacture of gunpowder and other substances liable to sudden explosion, and imposes penalties for any breach of its provisions. It is a nuisance at common law to erect gunpowder mills or keep gunpowder in a dangerous situation; 2 Str. 1167; Holt's Ca. 499. See 23 & 24 Vict. c. 139, amending the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks, amended by the 24 & 25 Vict. c. 139, and further amended and extended by 25 & 26 Vict. c. 98; and 2 & 3 Vict. c. 47, empowering superintendents or inspectors belonging to the metropolitan police force to enter ships in the Thames to search for unlawful quantities of gunpowder; and sect. 37 of same Act, imposing penalties for heating or melting combustible matters on board any ship, &c., on the river Thames, between Westminster Bridge and Blackwall.

in the fifth and sixth years of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales;" and in Scotland any royal burgh and any of the burghs or towns returning or contributing to return members to parliament; and in Ireland any place for the time being subject to the provisions of the Act of the session holden in the third and fourth years of Her Majesty, chapter one hundred and eight, intituled "An Act for the Regulation of Municipal Corporations in Ireland:"

"Harbour:" "Harbour" shall include any port, dock, navigable river, pier, or other works in or at which vessels ship or discharge goods or passengers:

"Harbour authority." "Harbour authority" shall include all persons or bodies of persons, corporate or unincorporate, being proprietors of or entrusted with the duty of improving, maintaining, or managing any harbour.

Regulations to be observed by a ship carrying petroleum.

II. Every vessel carrying a cargo consisting wholly or in part of petroleum on entering any harbour within the United Kingdom shall conform to such regulations in respect to the place at which she is to be moored as may from time to time be issued by the harbour authority having jurisdiction over such harbour. If any vessel is moored in any place in contravention of such regulations, the owner or master of such vessel shall incur a penalty not exceeding 20*l.* for each day during which the vessel remains moored, and it shall be lawful for the harbour master, or any other person acting under the orders of the harbour authority, to cause such vessel to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said regulations, and all expenses incurred in such removal may be recovered in the same manner in which penalties are hereby made recoverable.

Regulations to be observed in storing petroleum.

III. From and after the 1st day of October, 1862, not more than forty gallons of petroleum shall be kept within fifty yards of a dwelling house or of a building in which goods are stored, except in pursuance of a licence given by such local authority as is hereinafter mentioned.

Any petroleum kept in contravention of this section shall be forfeited, and, in addition thereto, the occupier of the place in which such petroleum is kept shall incur a penalty not exceeding 20*l.* a day for each day during which petroleum is kept in contravention of this Act (*b*).

Definition

IV. The following bodies shall respectively be the local

(*b*) As to recovery and application of penalty, see sect. 7, *post*.

authority to grant licences under this Act in the districts hereinafter mentioned; (that is to say,) of local authority.

1. In the city of London, except as hereinafter mentioned (*c*), the court of lord mayor and aldermen of the said city:
2. In the metropolis, as defined by the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, except the city of London, and except as hereinafter mentioned (*d*), the metropolitan board of works:
3. In any borough in England or Ireland, except as hereinafter mentioned, the mayor, aldermen, and burgesses, by the council:
4. In any place in England or Ireland, except as hereinafter mentioned, within the jurisdiction of any trustees or improvement commissioners, appointed under the provisions of any local or general Act of parliament, the trustees or commissioners.
5. In any burgh or place in Scotland, except as hereinafter mentioned, within the jurisdiction of any town council, and not subject to the jurisdiction of police commissioners or trustees, the town council; but in any burgh or place in Scotland, except as hereinafter mentioned, within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, the police commissioners or trustees:
6. In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority hereinbefore mentioned, the harbour authority, to the exclusion of any other local authority:
7. In any place in England or Ireland in which there is no local authority as hereinbefore defined, the justices in petty sessions assembled, and in Scotland any two justices of the peace for the county.

V. Licences in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licences, if any, granted by such authority are executed; they may be granted for a limited time, and there may be annexed thereto any conditions as to renewal or otherwise which the local authority thinks necessary for diminishing the risk of damage from Mode of granting licences.

(*c*) See paragraph 6 of this section relative to harbours within the jurisdiction of a harbour authority.

(*d*) See note (*c*) *supra*.

explosion or fire; and any licensee violating any of the conditions of his licence shall be deemed to be an unlicensed person.

In case of refusal of licence, the applicant may memorialize secretary of state.

VI. If, on any application for a licence under this Act, the local authority refuses the licence, or grants the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, certify in writing under the hand or hands of one or more of the persons constituting the local authority the grounds on which it refused the licence or annexed conditions to the grant thereof, and shall deliver the certificate to the applicant, who may thereupon, within ten days from the time of the delivery thereof, transmit the same to one of Her Majesty's principal secretaries of state if the application is for a licence in England or Scotland, and to the lord lieutenant or other chief governor if the application is for a licence in Ireland, together with a memorial, praying that, notwithstanding such refusal, the licence may be granted, or that such conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial; and it shall be lawful for the secretary of state, lord lieutenant, or other chief governor, if he think fit, on consideration of such memorial and certificate, and if he think it necessary or desirable, after due inquiry from and a report by such person as he may appoint for that purpose, to grant the licence prayed for, either absolutely, or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority; and the licence so granted, or altered and modified, as the case may be, when certified under the hand of the said secretary of state, lord lieutenant, or other chief governor, shall be to all intents as valid as if granted by the local authority.

Forfeitures and penalties in England and Ireland.

VII. Any forfeiture or penalty for an offence against this Act may be enforced in England and Ireland upon summary conviction before any two justices; and one moiety of the forfeiture and penalty shall belong to Her Majesty, and the other moiety to the informer, unless the informer is a servant of the person informed against, in which case the moiety of the forfeiture or penalty which would otherwise belong to the informer shall be applied in such manner and to such other purposes as the justices in their or his discretion may think fit.

Recovery of forfeitures and penalties in Scotland.

VIII. Any forfeiture or penalty for an offence against this Act may be enforced in Scotland upon summary conviction, at the instance of the procurator fiscal, before any sheriff, or before any two justices of the county, or before the magistrates or any police magistrate of the burgh in which the offence was

committed, who may sentence the offender to imprisonment, until such forfeiture or penalty and the expenses of conviction are paid, for a period not exceeding three months; and one moiety of such forfeiture or penalty shall belong to Her Majesty, and the other moiety shall be applied in such manner and to such purposes as such sheriff, justices, magistrates, or magistrate in their or his discretion may think fit.

Search for petroleum.

IX. Petroleum may be searched for in the same manner, under the same warrants, and subject to the same conditions in, under, and subject to which gunpowder may be searched for, in pursuance of the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine(*e*); and all the provisions of the said Act relating to searching for gunpowder shall be incorporated with this Act, and be construed as if the word "gunpowder" in such provisions included petroleum as defined by this Act, and as if the Act therein referred to were this Act.

Reservation of previous powers with respect to inflammable substances.

X. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of parliament, law, or custom, and the local authority may exercise such other powers in the same manner as if this Act had not passed; and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance.

(*e*) By the 23 & 24 Vict. c. 139, s. 17, the secretary of state may authorize persons to inspect mills, &c., in which gunpowder, &c. is manufactured or kept; and by sect. 27 the conservators of the Thames may appoint searchers for unlawful quantities of gunpowder in the river Thames.

18 & 19 VICT. CAP. 116.

AN ACT

FOR THE BETTER PREVENTION OF DISEASES.

14TH AUGUST, 1855.

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," in so far as the same relate to the prevention or mitigation of epidemic, endemic, or contagious diseases, are defective, and it is expedient to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited for all purposes as the "Diseases Prevention Act, 1855."

Local authority for execution of Act.

II. The local authority for executing this Act shall be the local authority acting in execution of any general Act in force for the time being for the removal of nuisances (*a*).

Expenses of Act.

III. The expenses incurred in execution of this Act shall be borne out of the rates or funds administered by such local authority, under the provisions and for the purposes of any such general Act as is referred to in the preceding section (*b*).

(*a*) Repealed by 23 & 24 Vict. c. 77, s. 10, *post*; and see sect. 11 of the Act constituting guardians and overseers of the poor local authorities for executing Diseases Prevention Act.

(*b*) Repealed by 25 & 26 Vict. c. 77, s. 10, *post*; and see provisions in same section as to payment of expenses of defraying execution of Act.

IV. The local authority and their officers shall have power of entry for the purposes of this Act, and for executing or superintending the execution of the regulations and directions of the general board issued under this Act. Power of entry.

V. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the lords and others of Her Majesty's most honourable privy council, or any three or more of them, (the lord president of the council or one of Her Majesty's principal secretaries of state being one,) may, by order or orders to be by them from time to time made, direct that the provisions herein contained for the prevention of diseases be put in force in England, or in such parts thereof as in such order or orders respectively may be expressed, and may from time to time, as to all or any of the parts to which any such order or orders extend, and in like manner revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of Her Majesty's privy council, or of any members thereof, as aforesaid, shall be certified under the hand of the clerk in ordinary of Her Majesty's privy council, and shall be published in the London Gazette; and such publication shall be conclusive evidence of such order to all intents and purposes. Power to privy council to issue orders that provisions herein contained for prevention of diseases may be put in force.

VI. From time to time after the issuing of any such order as aforesaid, and whilst the same continues in force, the general board of health (*c*) may issue directions and regulations, as the said board think fit— Power to general board of health to issue regulations to carry out such provisions.

For the speedy interment of the dead:

For house to house visitation:

For the dispensing of medicines, guarding against the spread of disease, and affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases, such medical aid and such accommodation as may be required:

And from time to time, in like manner, may revoke, renew, and alter any such directions and regulations as to the said board appears expedient, to extend to all parts in which the provisions of this Act for the prevention of disease shall for the time being be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts, and then to such parts as therein are spe- Local extent and duration of regulations of general board.

(*c*) Powers of general board of health now vested in privy council by 21 & 22 Vict. c. 97.

cified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall under such order be applicable to the same parts.

Publication of such regulations.

VII. Every such direction and regulation as aforesaid, when issued, shall be published in the London Gazette, and the gazette in which such direction or regulation was published shall be conclusive evidence of the direction or regulation so published, to all intents and purposes.

The local authority to see to the execution of such regulations, &c.;

VIII. The local authority shall superintend and see to the execution of such directions and regulations, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require.

and may direct prosecutions for violating the same.

IX. The local authority may from time to time direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such direction and regulation.

Orders of council, directions, and regulations to be laid before parliament.

X. Every order of Her Majesty's privy council, and every direction and regulation of the general board of health, under this Act, shall be laid before both houses of parliament forthwith upon the issuing thereof, if parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of parliament.

Order in council may extend to parts and arms of the sea.

XI. Orders in council issued in pursuance of this Act for putting in force the provisions for the prevention of disease in the said Nuisances Removal and Diseases Prevention Acts contained, in Great Britain, may extend to parts and arms of the sea lying within the jurisdiction of the admiralty; and the board of health for England may issue under this Act directions and regulations for cleansing, purifying, ventilating, and disinfecting, and providing medical aid and accommodation, and preventing disease in ships and vessels, as well upon arms and parts of the sea aforesaid as upon inland waters.

Medical officers of unions and others entitled to costs of attending sick on board vessels, when

XII. Whenever, in compliance with any regulation of the general board of health, which they may be empowered to make under this Act, any medical officer appointed under and by virtue of the laws for the time being for the relief of the poor, shall perform any medical service on board of any vessel, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his ser-

vices for the union or place for which he is appointed, and such charges shall be payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a union or parish officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case of dispute in respect of such charges, such dispute may, where the charges do not exceed 20*l.*, be determined summarily, at the place where the dispute arises, as in case of seamen's wages not exceeding 50*l.*, according to the provisions of the law (*d*) in that behalf for the time being in force; and any justice before whom complaint is made shall determine summarily as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made.

required by orders of general board of health.

XIII. The directions and regulations of the general board of health under this enactment shall be under the seal of the said board, and the hand of the president or two or more members thereof; and any copy of such regulations purporting to bear such seal and signature, whether the said signature and seal be respectively impressed and written, or printed only, shall be evidence in all proceedings in which such regulations may come in question.

Authentication of directions and regulations of genera board of health.

XIV. Whoever wilfully obstructs any person acting under the authority or employed in the execution of this Act, and whosoever wilfully violates any direction or regulation issued by the general board of health as aforesaid, shall be liable for every such offence to a penalty not exceeding 5*l.*, to be appropriated in or towards defraying the expenses of executing this Act.

Penalty for obstructing execution of Act.

XV. The provisions of any general Act in force for the removal of nuisances, with regard to the service of notices, the proof of orders or resolutions of the local authority, and the recovery of penalties, shall extend and apply to this Act.

Certain provisions of Nuisances Removal Act to apply to this Act.

(*d*) According to provisions contained in sects. 188, 523, of Merchant Shipping Act, 17 & 18 Vict. c. 104.

18 & 19 VICT. CAP. 121.

AN ACT

TO CONSOLIDATE AND AMEND THE NUISANCES REMOVAL AND DISEASES PREVENTION ACTS, 1848 AND 1849.

14TH AUGUST, 1855.

11 & 12 Vict. c. 123; 12 & 13 Vict. c. 111.

WHEREAS the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and it is expedient to repeal the said Acts as far as relates to England, and to substitute other provisions more effectual in that behalf: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Recited Acts repealed as far as relates to England, except as to proceedings commenced.

I. From and after the passing of this Act, the said Acts are by this section repealed, as far as relates to England: Provided always, that all proceedings commenced or taken under the said Acts, and not yet completed, may be proceeded with under the said Acts; and all contracts or works undertaken by virtue of the said Acts shall continue and be as effectual as if the said Acts had not been repealed.

Interpretation of certain terms used in this Act.

II. In this Act the following words and expressions have the meanings by this section hereinafter assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,) the word "place" includes any city, borough, district under the Public Health Act, parish, township, or hamlet, or part of any such city, borough, district, town, parish, township, or hamlet; the word "guardians" includes the directors, wardens, overseers, governors, or other like officers having the management of the poor for any parish or place where the matter or any part of the matter requiring the cognizance of any such officer arises; the word "borough" and the expressions "mayor, alderman, and bur-

gesses," "council," and "borough fund," have respectively the same meaning as in the Acts for the regulation of municipal corporations, and shall also respectively mean, include, and apply to any royal borough, royal town, or other town having a warden, high bailiff, borough-reeve, or other chief officer, and burgesses or inhabitants, however designated, associated with him in the government or management thereof, or any town or place having a governing body therein in the nature of a corporation or otherwise, and to the chief officers and governing bodies of such boroughs, towns, and places, and to the funds and property under the management of or at the disposal of such chief officers and governing bodies; the expression "Improvement Act" means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes; the word "owner" includes any person receiving the rents of the property in respect of which that word is used from the occupier of such property on his own account, or as trustee or agent for any other person, or as receiver or sequestrator appointed by the court of chancery or under any order thereof, or who would receive the same if such property were let to a tenant; the word "premises" extends to all messuages, lands, or tenements, whether open or inclosed, whether built on or not, and whether public or private; the word "parish" includes every township or place separately maintaining its poor or separately maintaining its own highways; the expression "quarter sessions" means the court of general or quarter sessions of the peace for a county, riding, or division of a county, city, or borough; the word "person," and words applying to any person or individual, apply to and include corporations, whether aggregate or sole, and the expression "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

PART I.

PART I. *Constitution of local authority, expenses, description of nuisances, and powers of entry.*

And with respect to the constitution of the local authority for the execution of this Act, the expenses of its execution, the description of nuisances that may be dealt with under it, and the powers of entry for the purposes of this Act, be it enacted thus:

[III. (*a*) The following bodies shall respectively be the local authority to The local

(*a*) Repealed by 23 & 24 Vict. c. 77, s. 1, *post*; and see as to local authority, ss. 2, 3, of that Act.

execute this Act in places as herein stated.

authority to execute this Act in the districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being; and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough:

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an Improvement Act, such trustees or commissioners:

In any place within which there is no such local board of health, nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, that board:

In any place where there is no such local board of health, council, body of trustees, or commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum:

In any place wherein there is no such local board of health, council, body of trustees, or commissioners, highway board, or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting and watching under the Act 3 & 4 Will. 4, c. 90, that board with the surveyor of highways:

In any place in which there is no such local board of health, council, body of trustees, or commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place.]

As to filling up vacancies.

IV. On any vacancy in such nuisances removal committee arising from death, change of residence, or otherwise, notice shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election; and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete.

Power to local authority to appoint committees (*b*).

V. The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, whereof two shall be a quorum; and such local authority, or their committee, may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf.

As to the execution of this Act in extra-parochial places (*d*).

[VI. (*c*) In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a nuisances removal committee, elected annually by the householders within the extra-parochial place:

The first election of such committee shall take place at a meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place; and

Subsequent elections shall be held annually on some day in Easter week at meetings summoned by the chairman of the local authority for the year preceding:

Extra-parochial places not so comprised as aforesaid, and having a population of less than two hundred persons, shall for the purposes of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections.]

(*b*) See sect. 5 of 23 & 24 Vict. c. 77, *post*.

(*c*) Repealed by 23 & 24 Vict. c. 77, s. 1, *post*.

(*d*) An extra-parochial place (the seashore) having no houses or inhabitants, held within this section. *R.* v. *Gee*, 5 Jur. (N. S.) 1343; 28 L. J. (N. S.) Q. B. 296.

As to defraying expenses of executing this Act.

[VII. (*e*) All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

Out of general district rates, where the local authority is a local board of health:

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen, and burgesses by the council, or if there be an improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such improvement Act; or in the city of London and the liberties thereof, any rates or funds administered by the commissioners of sewers for the said city and liberties:

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable:

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act:

Out of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisances removal committee (*f*):

Out of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching:

And if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred; but if such parish or place be now or hereafter shall be partly comprised within and partly without the limits of a place where a local authority other than a highway board, nuisance removal committee, inspectors of watching and lighting, and surveyors or guardians and surveyors, exists or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits shall be defrayed out of any highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded; and if

(*e*) Repealed by 23 & 24 Vict. c. 77, s. 1, *post*; and as to mode of defraying expenses of local authority, see ss. 4, 5, and 6 of that Act.

(*f*) The houses using a sewer must be assessed before the highway rate can be resorted to; *R. v. Goose*, 30 L. J. (N. S.) M. C. 41.

there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. cap. 65, be raised and assessed upon such excluded part:

And when the local authority has not control of such rates or funds, the officer or person having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall include the costs of such distress and sale:

In extra-parochial places having a population of not less than two hundred persons, out of a rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein:

In extra-parochial places having a population of less than two hundred persons, out of a similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place:

And the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed, in the same manner, and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways.]

VIII. The word "nuisances" under this Act shall include— What are deemed nuisances under this Act (*g*).

Any premises in such a state as to be a nuisance or injurious to health:

Any pool, ditch, gutter, watercourse, privy, urinal, cess-

(*g*) As to nuisances to which the Act applies, see *Soltau* v. *De Held*, 2 Sim. (N. S.) 133.

pool, drain, or ashpit, so foul as to be a nuisance or injurious to health:

Any animal so kept as to be a nuisance or injurious to health:

Any accumulation or deposit which is a nuisance or injurious to health:

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby (h).

Power to local authority to appoint a sanitary inspector and allow him a proper salary.

[IX. (i) The local authority shall, for the purposes of this Act, appoint or employ, or join with other local authorities in appointing or employing, a sanitary inspector or inspectors, and may appoint a convenient place for his or their office, and may allow to every such person on account of his employment a proper salary or allowance; and where local authorities join in such appointment or employment they may apportion among themselves the payment of such salary or allowance: Provided always, that where the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it shall not be necessary to appoint any other inspector under this Act, but the inspector acting in execution of the improvement Act shall have all the powers, authorities, and privileges granted to any inspector appointed under this Act.]

Notice of nuisances to be given to local authority, &c. to ground proceedings.

X. Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons: the sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses; and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed.

(h) See *Scholefield* v. *Schunk*, 19 J. P. 84.

(i) Repealed by 23 & 24 Vict. c. 77, s. 2, *post*; and see sect. 9 of that Act.

XI. The local authority shall have power of entry for the following purposes of this Act, and under the following conditions:— Power of entry to local authority or their officer (*k*).

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorize the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may

(*k*) See 13th section of 23 & 24 Vict. c. 77, *post*, as to proceedings by inhabitants in case of nuisance on private premises. A district board have no authority to enter private premises unless an order of justices has been previously obtained. *Tinkler* v. *Board of Works for Wandsworth District*, 27 L. J. (N. S.) Ch. 342.

from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice.

PART II. *With regard to removal of nuisances.*

PART II.

With regard to the removal of nuisances, be it enacted thus:

Proceedings by local authority before justices in the case of nuisances likely to recur, &c. (*a*)

XII. In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion likely to recur, or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or, if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated (*b*), the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs

If proved to justices that nuisance exists, &c. they shall issue order for abatement, &c.

(*a*) As to what is an order to abate a nuisance, and not an order to execute structural works under sect. 16, so as to be the subject of appeal, see *ex parte Mayor of Liverpool*, 27 L. J. (N. S.) M. C. 89.

(*b*) The jurisdiction of justices to determine complaint of nuisances, only arises where both cause and effect of nuisance are within the area of the local authority; *R.* v. *Cotton*, (1 E. & E.) 903. See sect. 13 of 23 & 24 Vict. c. 77, *post*, empowering any inhabitant to make complaint of nuisance on private premises.

incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance.

Justices order for abatement.

XIII. By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

Prohibitive order against future nuisance.

Penalty for contravention of order of abatement; and of prohibition.

XIV. Any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than 10*s.* per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding 20*s.* per day during such contrary action; and the local authority may, under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the

Local authority may enter and remove or abate nuisance.

cost to the person on whom the order is made as hereinafter provided (*c*).

Appeal against order of prohibition.

XV. Any such order of prohibition may be appealed against as provided in this Act.

Appeal against order of abatement when structural works are required.

XVI. When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted (*d*).

If person causing nuisance cannot be found, local authority to execute order at once.

XVII. Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act.

Manure, &c., to be sold.

XVIII. Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing.

(*c*) A local board of health are not compellable by *mandamus* to enforce an order they had obtained to abate a nuisance; *Ex parte Bassett*, 7 Ell. & B. 280.

(*d*) As to what is not an order for structural works within the section, see *Ex parte Mayor of Liverpool*, 27 L. J. (N. S.) M. C. 89; and as to imposing a penalty for disobedience, notwithstanding the entry of an appeal against the order, *ib.* This section applies to structural works required for abatement of nuisances on private premises only; *R.* v. *Nuisances Removal Committee of Middleton* 28 L. J. (N. S.) M. C. 41.

XIX. All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice, or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses, and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof. **Costs and expenses of works to be paid by person on whom order is made, or owner or occupier (*e*).**

XX. Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale. **Proceedings before justices to recover expenses.**

(*e*) Action will lie in county court; *Governor of Hertford Union* v. *R.* v. *Harden*, 2 E. & B. 128; *Kimpton*, 25 L. J. (N.S.) M. C. 41.

Surveyors of highways to cleanse ditches, &c., paying owners, &c., for damages.

XXI. All surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying (*f*) the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in enclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways (*g*).

Power to local authority to cover and improve open ditches, &c. (*h*)

XXII. Whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings, or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Highways in England;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment, either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at

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(*f*) Tender of satisfaction or payment is not a condition precedent to the right of entry; *Peters* v. *Clarson*, 7 M. & G. 548.

(*g*) See 5 & 6 Will. 4, c. 50, s. 54.

(*h*) Local authority has no power to assess houses in another parish for the expenses of continuing a sewer. *R.* v. *Warner*, 27 L. J. (N. S.) M. C. 144; *R.* v. *Tatham*, 8 E. & B. 915; and see *R.* v. *Cotton*, 28 L. J. (N. S.) M. C. 29. An assessment is not bad because it does not provide for houses which might be afterwards built and use the sewer; *R.* v. *Justices of Middlesex*, 2 Jur. (N. S.) 1045, Q. B.; and as to what is using a sewer and liability to second assessment, *Ibid.* *R.* v. *Warner*, 6 Ell. & B. 395; Houses must be assessed before highway rates can be resorted to; *R.* v. *Goss*, 30 L. J. (N. S.) M. C. 41. As to *mandamus* to Nuisances Removal Committee to construct a sewer, see *R.* v. *Gee and others*, 23 J. P. 274; 28 L. J. (N. S.) Q. B. 298. And see report of case, 23 J. P. 274.

the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways (*i*); and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also, that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any.

Penalty for causing water to be corrupted by gas washings.

XXIII. Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying o gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, shall forfeit for every such offence the sum of 200*l.*

Penalty to be sued for in superior courts within six months.

XXIV. Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily penalty during the

XXV. In addition to the said penalty of 200*l.* (and whether such penalty shall have been recovered or not), the person or

(*i*) The local authority are not bound, for the purpose of executing structural works, to obtain an order of justices under s. 16; *R.* v. *Middleton Nuisances Removal Committee*, 1 E. & E. 98; 28 L. J. (N. S.) M. C. 41; and as to time for notice of appeal, and application of limit of one shilling in the pound, *Ibid.*

continuance of the offence.

company so offending shall forfeit the sum of 20*l.* (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Penalty on sale of unwholesome meat, &c. (*a*)

XXVI. The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale or in the course of or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any part in England; and in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, appear to him to be unfit for such food, the same may be seized; and if it appear to a justice that any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, is unfit for the food of man, he shall order the same to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for such food; and the person to whom such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding 10*l.* for every carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found.

As to nuisances arising in cases of noxious trades, businesses, processes, or manufactures

XXVII. If any candle house, melting house, melting place, or soap house, or any slaughter house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the

(*a*) It was held that sanitary inspector under a local improvement Act could not seize a carcase unless it be exposed for sale, or be intended to be used for food; *Ellis* v. *Nightingale*, 27 L. J. (N. S.) M. C. 151.

neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier,) shall upon a summary conviction for such offence, forfeit and pay a sum of not more than 5*l.* nor less than 40*s.*, and upon a second conviction for such offence the sum of 10*l.*, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of 200*l.*: Provided always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizance to try such appeal, and shall appeal accordingly: Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district.

Reference to superior court at the option of the party complained against.

XXVIII. Provided also, that if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of.

On certificate of medical officer to local authority that house is overcrowded proceedings

XXIX. Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be

may be taken to abate the same.

taken before the justice to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40*s*.

Local authority to order costs of prosecutions to be paid out of the rates.

XXX. The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any person offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act.

PART III.
As to procedure under this Act.

PART III.

AS TO PROCEDURE UNDER THIS ACT.

And with regard to procedure under this Act, be it enacted, that

Service of notices, summonses and orders.

XXXI. Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles (*a*) from the office of the inspector, then by a registered letter through the post.

Proof of resolutions of local authority.

XXXII. Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same.

(*a*) The distance must be measured in a straight line as the crow flies; *Stokes* v. *Grissell* 14 C. B. 678; *Lake* v. *Butler*, 24 L. J. (N. S.) Q. B 273.

As to proceedings taken against several persons for the same offence.

XXXIII. Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable.

One or more joint owners or occupiers may be proceeded against alone.

XXXIV. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would be entitled to contribution by law.

Designation of "owner" or "occupier."

XXXV. Whenever in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Penalty for obstructing execution of this Act.

XXXVI. Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding 5*l.*

Penalty on occupier obstructing owner.

XXXVII. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding 5*l.* for every day afterwards during the continuance of such noncompliance.

Penalties and expenses re-

XXXVIII. Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England

coverable under 11 & 12 Vict. c. 43.

according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act.

Proceedings not to be quashed for want of form (*a*).

XXXIX. No order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Appeals under this Act to be to quarter sessions.

XL. Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against, he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days (*b*) of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court, or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard; provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; provided also, that in any case of appeal the court of

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(*a*) See *Ex parte Mayor of Liverpool*, 8 E. & B. 537.

(*b*) Sunday must be counted; *R.* v. *Justices of Leicestershire*, 1 L. T. Rep. (N. S.) 12.

quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of Queen's Bench.

Forms to be used as in schedule.

XLI. The forms contained in the schedule to this Act annexed, or any forms to the like effect, varied as circumstances may require, may be used for instruments under this Act, and shall be sufficient for the purpose intended.

As to protection of local authority and its officers.

XLII. The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being (*c*).

Act not to impair jurisdiction of sewers commissioners, or common law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act.

XLIII. Nothing in this Act shall be construed to affect the provisions of any local Act as to matters included in this Act, nor to impair, abridge, or take away any power, jurisdiction, or authority which may at any time be vested in any commissioners of sewers or of drainage, or to take away or interfere with any course of proceedings which might be resorted to or adopted by such commissioners if this Act had not passed, nor to impair any power of abating nuisances at common law, nor any jurisdiction in respect of nuisances that may be possessed by any authority under the Act intituled "An Act to abate the Nuisances arising from the Smoke of Furnaces in the Metropolis, and from Steam Vessels above London Bridge," or the Common Lodging Houses Acts, the Act for the Regulation of Municipal Corporations, the Public Health Act, or any Improvement Act respectively, or any Acts incorporated with such Acts, and authorities may respectively proceed for the abatement of nuisances, or in respect of any other matter or thing hereinbefore provided or referred to, either under the Acts mentioned in this section or any other Act conferring jurisdiction in respect of the nuisances referred to in this Act, or any byelaws framed under any such Act, as they may think fit; and the local authorities constituted under and for the purposes of the Common Lodging House Acts, 1851 and 1853, shall for the purposes of those Acts have all the powers of local authorities under this Act.

Act not to affect navigation of

XLIV. Nothing herein contained shall enable any local authority, surveyor of highways, or other person, either with or without any order of justices, to injuriously affect the navi-

(*c*) See *Read* v. *Coker*, 13 C. B. 850.

rivers or canals.

gation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal; and the provisions of this Act shall not extend or be construed to extend to mines of different descriptions so as to interfere with or obstruct the efficient working of the same, or to the smelting of ores and minerals, or to the manufacturing of the produce of such ores and minerals.

Saving as to rights of millowners, &c.

XLV. No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same persons.

Short title.

XLVI. In citing this Act in other Acts of parliament, and in legal instruments and other proceedings, it shall be sufficient to use the words "The Nuisances Removal Act for England, 1855."

SCHEDULE OF FORMS.

Form (A.)

Order of Justices for Admission of Officer of Local Authority to inspect private Premises.

Whereas [*describe the local authority*] have by their officer [*naming him*] made application to me *A. B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1855, viz. [*describe nuisance*], exists on private premises at [*describe situation of premises so as to identify them*], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act, and refused:

Now, therefore, I, the said *A. B.*, do hereby require you to admit the said [*name the local authority*], [*or* the officer of the said (*local authority*)], for the purpose of inspecting the said premises.

Dated this —— day of —— 18—.

A. B.

FORM (B.)

Notice of Nuisance.

To the local authority (*describing it*).

I [*or* we], the person aggrieved by the nuisance hereinafter described [*or* the undersigned and described inhabitant householders, sanitary inspector, *or other officer* (*describing him*)], do hereby give you notice, that there exists in or upon the [dwelling house, yard, *etc., as the case may be*], situate at —— [*giving such description as may be sufficient to identify the premises*], in the parish of —— in your district, under the Nuisances Removal Act, 1855, the following nuisance, videlicit [*describing the nuisance as the case may be; for instance*, a dwelling house or building a nuisance or injurious to health for want of a privy *or* drain *or* sufficient means of ventilation, *or* so dilapidated *or* so filthy as to be a nuisance or injurious to health, *or for further instance*, a ditch *or* drain so foul as to be a nuisance or injurious to health, *or* an accumulation of —— a nuisance or injurious to health, *&c., or* swine so kept as to be a nuisance or injurious to health]; and that such nuisance is caused by [*naming the person by whose Act or default the nuisance is caused, or* by some person unknown].

Dated this —— day of —— in the year of our Lord One thousand eight hundred and ——.

[*Signed by complainant under section* 10.]

FORM (C.)

Notice to Owner or Occupier of Entry for Examination.

To the owner [*or* occupier, *as the case may be,*] of [*describe the premises*] situate at [*insert a description sufficient to identify the premises.*]

Take notice, that under the Nuisances Removal Act for England, 1855, the [*local authority, naming it,*] in whose dis-

trict under the said Act the above premises are situate, have received a notice from [*name complainant*], stating that in or upon the said premises [*insert the cause of nuisance as set forth in the notice.*]

And further take notice, that after the expiration of twenty-four hours from the service of this notice the [*local authority*] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this —— day of —— in the year of our Lord One thousand eight hundred and ——.

A. B.,
The officer appointed by the [*local authority*] to take proceedings under the Nuisances Removal Act for England, 1855.

FORM (D.)

Summons.

To the owner or occupier of [*describe premises*] situate at [*insert such a description as may be sufficient to identify the premises*], *or* to *A. B.* of

County of —— [*or* borough of —— *&c. or* district of —— *or as the case may be*] to wit.

You are required to appear before two of Her Majesty's justices of the peace [*or* one of the magistrates of the police courts of the metropolis, *or* the stipendiary magistrate] of the county [*or other jurisdiction*] of —— at the petty sessions [*or* court] holden at —— on the —— day of —— next, at the hour of —— in the —— noon, to answer the complaint this day made to me by —— [*or* by —— on behalf of] [*naming the local authority, as the case may be*], that in or upon the premises above mentioned [*or* in or upon certain premises situate at No. —— in the —— street, in the parish of —— *or such other description or reference as may be sufficient to identify the premises*], in their district, under the Nuisances Removal Act for England, 1855, the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A. B.* [*or in case the nuisance be discontinued, but likely to be repeated, say*, there existed recently, to wit, on or about the —— day of

—— on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last-mentioned day been removed or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under the hand of me, *J. P.*, Esquire, one of Her Majesty's justices of the peace acting in and for the [*jurisdiction*] stated in the margin, *or* one of the magistrates of the police courts of the metropolis, *or* stipendiary magistrate of ——, —— day of —— in the year of our Lord One thousand eight hundred and ——.

FORM (E.)

Order of Justices for Removal of Nuisances by Owner, &c.

To the owner [*or* occupier] of [*describe the premises*] situate [*give such description as may be sufficient to identify the premises,*] *or* to *A. B.* of —— *or* to [*giving name of the local authority*], or to their servants or agents, and to all whom it may concern.

County of —— [*or* borough, *&c.* of —— *or* district of —— *or as the case may be*]. } WHEREAS on the —— day of —— complaint was made before —— Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin, [*or* before the undersigned, one of the magistrates of the police courts of the metropolis, *or as the case may be*] by [*or* by —— on behalf of] [*the local authority, naming it, as the case may be*], that in or upon certain premises situate at —— in the district under the Nuisances Removal Act for England, 1855, of the complainants above named, the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or* occupier] of the said premises [*or* was caused by *A. B.*] (*If the nuisance have been removed, say,* the following nuisance existed on or about [*the day the nuisance was ascertained to exist,*] and that the said nuisance was caused, *&c.* and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.)

And whereas —— the owner [*or* occupier] within the meaning of the said Nuisances Removal Act, 1855, [*or* the said *A. B.*,] hath this day appeared before us justices, being two of Her Majesty's justices in and for ——, sitting in petty sessions at their usual place of meeting [*or* before me, the said magistrate of the police courts of the metropolis, *or as the case may be*], to answer the matter of the said complaint [*or in case*

the party charged do not appear, say], And whereas it hath been this day proved to our [*or* my] satisfaction that a true copy of a summons requiring the owner [*or* occupier] of the said premises [*or* the said *A. B.*] to appear this day before us [*or* me] —— hath been duly served according to the said Act:

Now upon proof here had before us [*or* me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or* occupier] of the said premises [*or* by the said *A. B.*], we [*or* I], in pursuance of the said Act, do order the said owner [*or* occupier, *or A. B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify the works to be done, as, for instance,* to cleanse, whitewash, purify, and disinfect the said dwelling house; *or, for further instance,* to construct a privy *or* drain, *&c.*; *or, for further instance,* to cleanse *or* to cover *or* to fill up the said cesspool, *&c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the justices that the nuisance is likely to recur on the premises say* [and we] [*or* I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or* occupier *or A. B.*] from [*here insert the matter of the prohibition, as, for instance,* from using the said house or building for human habitation until the same, in our judgment, is rendered fit for that purpose].

And if the above order for abatement be not complied with, [*or* if the above order of prohibition be infringed,] then we [*or* I] do authorize and require you the said [*local authority, naming it,*] from time to time to enter upon the said premises, and to do all such works, matters, and things as may be necessary for carrying this order into full execution according to the Act aforesaid.

In case the nuisance were removed before complaint, say [now, upon proof here had before us that at or recently before the time of making the said complaint, to wit, on —— as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [*or* I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or* I] [*order on local authority to do works*].

Given under the hands and seals of us, two of Her Majesty's justices of the peace in and for —— [*or* the hand and seal of me, one of the magistrates of the police courts of the metropolis, *or as the case may be*], —— this —— day of —— in the year of our Lord One thousand eight hundred and ——.

FORM (F.)

Order of Justices for Removal of Nuisance by Local Authority.

To the town council, *&c., as the case may be.*

County, *&c.* to wit. } WHEREAS [*recite complaint of nuisance as in last form*]:

And whereas it hath been now proved to our [*or* my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [*as the case may be*]: Now we [*or* I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given, *&c.*

FORM (G.)

Order to permit Execution of Works by Owners.

County of —— [*or* borough of —— *or* metropolitan police district, *or as the case may be*], to wit. } WHEREAS complaint hath been made to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of —— [*or* one of the magistrates of the police courts of the metropolis, *or as the case may be, or* one of Her Majesty's justices of the peace, *as the case may be,* of the county of ——], by *A. B.*, owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling house [*or* building, *or as the case may be*], situate at [*insert such a description of the premises as may be sufficient to identify them*], in the parish of —— in the said county [*or* borough, *&c.*], that *C. D.*, the occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said *C. D.* [*here describe the Act of prevention generally according to the circumstances; for instance thus,* doth refuse to quit the said house, the same having by the order of justices been declared unfit for human habitation, *or* doth prevent the said *A. B.* from cleansing *or* whitewashing *or* purifying the said dwelling house, *or* erecting a privy *or* drain, *or* breaking an aperture for ventilation, *or* cleansing a drain, ditch, gutter, watercourse, privy, urinal,

cesspool, *or* ashpit which is a nuisance or injurious to health]: And whereas the said *C. D.* has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [*describe the act or works to be done*] is necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* [*describe the act or works to be done*] in the manner required by the said Act.

Given under my hand and seal this —— day of —— in the year of our Lord One thousand eight hundred and ——.

E. F. (L.S.)

FORM (H.)

Summons for Nonpayment of Costs, Expenses, or Penalties. Sect. 20.

To —— [*describe the person from whom the costs, expenses, and penalties are due*].

County of ——, *or* borough of ——, *or* district of ——, to wit. } You are required to appear before two of Her Majesty's justices of the peace [*or* one of the magistrates of the police courts of the metropolis, *or* the stipendiary magistrates] of the county [*or other jurisdiction*] of ——, at the petty sessions [*or* court] holden at ——, on the —— day of —— next, at the hour of —— in the —— noon, to answer the complaint this day made to me by ——, [*or* by ——, on behalf of] [*naming the local authority*], that the sum of —— pounds, being costs and expenses incurred by you under and in relation to a certain complaint touching [*describe the nuisance*], and an order of [*describe the person making the order*] duly made in pursuance of the Nuisances Removal Act for England, 1855, [*if penalties are due, add,* and also the sum of ——, being the amount of penalties payable by you for disobedience of the said order,] remains unpaid and due from you.

Given under the hand of me *J. P.*, esquire, one of Her Majesty's justices of the peace acting in and for the [*jurisdiction stated in the margin*] [*or* one of the magistrates of the police courts of the metropolis, *or* stipendiary magistrate of ——] the —— day of ——, in the year of our Lord One thousand eight hundred and ——.

FORM (I.)

Order for Payment of Costs, Expenses, and Penalties.
Sect. 20.

To —— [*name the person on whom the order is made*].

County, &c. } Whereas complaint has been made before us [*or*
to wit. } me] for that [*recite cause of complaint*]:
And whereas the said [*naming the person against whom the complaint is made*] has this day appeared before us the said justices [*or* before me the said magistrate of the police courts of the metropolis, *or as the case may be,*] to answer this matter of the said complaint: [*or in case the party charged do not appear, say,*]

And whereas it has been this day satisfactorily proved to us [*or* me] that a true copy of the summons requiring the said [*naming person charged*] to appear before us [*or* me] this day hath been duly served according to the said Act: Now, having heard the matter of the said complaint, we [*or* I] do adjudge the said [*naming the person charged*] to pay forthwith [*or* by instalments of —— payable respectively on or before the ——] to the said [*naming the person or local authority to whom the costs adjudged are payable*], the sum of —— for costs in this behalf, and to [*naming the person or authority to whom the expenses are payable,*] the sum of —— for expenses in this behalf, [*if penalties are due, add,* and the sum of —— for penalties incurred in relation to the premises,] together with the sum of —— being the charges attending the application for this order and proceedings thereon; and if the said several sums, amounting in the whole to —— [*or* if any one of the said instalments] be not paid within fourteen days after the same is due as aforesaid, we [*or* I] hereby order that the same be levied by distress and sale of the goods and chattels of the said ——, and in default of sufficient distress in that behalf, adjudge the said —— to be imprisoned in the common gaol [*or* house of correction, *as the case may be,*] at —— in the said county [*or as the case may be*] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [*or* sum], and all costs and charges of the said distress [and of the commitment and carrying of the said —— to the said house of correction *or* common gaol, *or as the case may be,*] shall be sooner paid.

Given under our [*or* my] hands, this —— day of ——, in the year of our Lord One thousand eight hundred and ——, at —— in the [county, *or as the case may be,*] aforesaid.

FORM (K.)

Warrant of Distress. Sect. 20.

To the constable of ——, and to all other peace officers in the said county [*or as the case may be*].

Whereas on —— last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [*or as the case may be*] [*or* a magistrate of the police courts of the metropolis *or* stipendiary magistrate, *as the case may be*] for that [*&c. as in the order*]; and thereupon having considered the matter of the said complaint, we [*or* I] adjudged the said —— [*set out from Form K. the adjudication of payment, and the order for distress and for imprisonment in default of distress*]: And whereas the time in and by the said order appointed for the payment of the said several sums of —— and —— hath elapsed, but the said —— hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of —— days after the making of such distress the last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the division of —— in the said [county, *or as the case may be*], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said ——; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under our [*or* my] hands and seals, this —— day of —— in the year of our Lord One thousand eight hundred and —— at —— in the [county] aforesaid.

A. B.

(L. S.) *C. D.*

FORM (L.)

Return of Proceedings under Nuisances Removal Act, 1855, *by the* [name the Local Authority at length].
From 25th March, 1855, *to 25th March*, 1856.

Date of Notice.	By whom given.	Nature of Nuisance.	Proceedings taken.	Remarks: — With any special work done under the Acts without any notice.
16th April -	The Inspector -	Foul Drainage from House.	Owner put down good drain, on summons, without justices order.	Several houses being in a like position, the highway surveyor laid down a sewer in the old watercourse, and each house was charged a proportionate sum for the same, of which the highest sum was 10*s*.
18th April -	Two Neighbours.	Offensive Cesspool.	Abated by local authority.	Renewed once: but penalty recovered, and no subsequent renewal attempted.

Dated this 26th day of March 1856. [*To be signed by the chairman of the local authority.*]

23 & 24 VICT. CAP. 77.

AN ACT

TO AMEND THE ACTS FOR THE REMOVAL OF NUISANCES AND THE PREVENTION OF DISEASES.

6TH AUGUST, 1860.

18 & 19 Vict. cc. 121 and 116.

WHEREAS the provisions of "The Nuisances Removal Act for England, 1855," and "The Diseases Prevention Act, 1855," concerning the local authority for the execution of the said Acts are defective, and it is expedient that the said Acts should be amended as hereinafter mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Nuisances Removal.

Sections 3, 6, 7, and 9 of 18 & 19 Vict. c. 121, repealed.

I. Section three, section six, section seven, and section nine of the said "Nuisances Removal Act for England, 1855," shall be repealed: Provided always, that such repeal as aforesaid shall not extend to any charges or expenses already incurred, but the same may be defrayed and recovered, and all proceedings commenced or taken under the said Act, and not yet completed, may be proceeded with, and all contracts under the said Act shall continue and be as effectual, as if this Act had not been passed.

Local authority to execute the Nuisances Removal Act.

II. The following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being, and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the local improvement Acts in force respectively in the said city and borough:

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement act, such trustees or commissioners:

In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor of such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

Highway board or nuisances removal committees now subsisting may be continued so long as they employ sanitary inspectors.

III. Provided, that in any place where a highway board or "the nuisances removal committee" chosen by the vestry in pursuance of the said Act is subsisting, and at the time of the passing of this Act employs or joins with other local authorities in employing a sanitary inspector or inspectors, such highway board or nuisances removal committee may continue to act, and a like committee may be annually chosen by the vestry for such place in the same manner as if this Act had not been passed; but in case in any year the nuisances removal committee be not chosen for such place in manner provided by the said Act, or if the highway board or committee now subsisting or hereafter chosen fail for two months in any year to appoint or employ a sanitary inspector or inspectors, the authority of such highway board or committee shall cease, and no like committee shall be chosen for such place, and the same body or persons shall thenceforth be the local authority for the place as if no such highway board or committee had been appointed therein.

How expenses of local authority to be defrayed.

IV. All charges and expenses incurred by the local authority in executing the said Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows; to wit,

Out of general district rates where the local authority is a local board of health:

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council:

Provided always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable:

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act:

Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor:

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority:

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "the nuisances removal committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof:

Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof:

So much of any such charges and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor.

V. Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under section five of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority; and every committee so appointed shall have the full power of executing the said Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee: Provided that where any one such committee is appointed for all the places for which the board is the local authority its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed.

Board of guardians may appoint committees for particular parishes.

VI. Provided also, that as regards the metropolis, the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue and be the local authorities for the execution of the said Nuisances Removal Act, and their charges and expenses shall be defrayed as if this Act had not been passed.

Saving for the vestries and district boards of the metropolis.

VII. All wells, fountains, and pumps provided under section fifty of "The Public Health Act, 1848," or otherwise, for the use of the inhabitants of any place, and not being the property of or vested in any person or corporation other than officers of such place, shall be vested in the local authority under this Act for such place, who shall from time to time cause to be kept in good repair and condition and free from pollution all wells, fountains, and pumps vested in them under this Act, and may also keep in good repair and condition and free from pollution other wells, fountains, and pumps dedicated to or open to the use of the inhabitants of such place.

Wells, &c. belonging to any place vested in local authority, &c.

VIII. If any person do any act whatsoever whereby any fountain or pump is wilfully or maliciously damaged, or the water of any well, fountain, or pump is polluted or fouled, he shall, upon summary conviction of such offence before two justices, forfeit a sum not exceeding 5*l.* for such offence, and

Penalty for fouling water.

a further sum not exceeding 20s. for every day during which such offence is continued after written notice from the local authority in relation thereto; but nothing herein contained shall extend to any offence provided against by sect. 23 of the said "Nuisances Removal Act."

Appointment of inspectors of nuisances.

IX. Local authorities under this Act may, for the purposes of the Act, severally appoint or employ inspectors of nuisances and make such payments as they see fit for the remuneration and expenses of such inspectors.

Diseases Prevention.

Sections 2 and 3 of 18 & 19 Vict. c. 116, repealed.

X. Sections two and three of "The Diseases Prevention Act, 1855," and every other enactment constituting a local authority for the execution of the same Act, or providing for the expenses of the execution thereof, except those contained in the eighteenth and nineteenth of Victoria, chapter one hundred and twenty, the Metropolis Local Management Act, shall be repealed.

Guardians and overseers of the poor to be the local authorities for executing Diseases Prevention Act.

XI. The board of guardians for every union, or parish not within an union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no board of guardians, the overseers of the poor shall be the local authority to execute the same Act, and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place; provided that every such board of guardians shall, for the execution of the said Act for the prevention of diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said Nuisances Removal Act; provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed; provided, moreover, that in respect of any place where, under this Act, the local authority for executing the Nuisances Removal Act is any other body than the board of guardians or the overseers of the poor, the privy council, if it see fit, may in the manner provided for the exercise of its powers under the Public Health Act, 1858,

authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act; provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed.

Local authorities may provide carriages for conveyance of infected persons.

XII. It shall be lawful for the local authority for executing the said "Diseases Prevention Act" to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to convey such sick and diseased persons as may be residing within such locality to any hospital or other place of destination, and the expense thereof shall be deemed to be an expense incurred in executing the said Act.

Justices, on the application of householders, may order the removal of nuisances.

XIII. Upon complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under section twelve of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: Provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under section eleven of the said Act: Provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices: Any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under section

twelve of the said Nuisances Removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority.

Guardians may procure sanitary reports and pay for the same.

XIV. The guardians of any union, or parish not within an union, may at any time employ one of their medical officers to make inquiry and report upon the sanitary state of their union or parish, or any part thereof, and pay a reasonable compensation for the same out of their common fund.

Interpretation of terms.

XV. The several words used in this Act shall be construed in the same manner as is declared with reference to the same words in the above-cited Act, termed "The Nuisances Removal Act for England, 1855," and all the provisions therein, and in "The Diseases Prevention Act, 1855," contained, shall respectively be applicable to this Act, except so far as they shall be hereby repealed, or be inconsistent with anything herein provided.

Justices not incapable of acting by being members of bodies to execute Nuisances Removal Act.

XVI. No justice of the peace shall, unless objected to at the hearing of any complaint or charge, be deemed incapable of acting in cases other than appeals arising under the said Nuisances Removal Act by reason of his being a member of any body hereby declared to be the local authority to execute the said Act, or by reason of his being a contributor, or liable to contribute, to any rate or fund out of which it is hereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

57 GEO. III. CAP. 29.

AN ACT

FOR BETTER PAVING, IMPROVING, AND REGULATING THE STREETS OF THE METROPOLIS, AND REMOVING AND PREVENTING NUISANCES AND OBSTRUCTIONS THEREIN (*a*).

16TH JUNE, 1817.

WHEREAS many of the streets and public places within that part of the metropolis which is situate within the weekly bills of mortality, and the parishes of Saint Pancras and Saint Marylebone in the county of Middlesex, are divided into parochial and other districts, and are paved and repaired and regulated, and obstructions and nuisances therein are removed, under the direction of certain commissioners or trustees, or other persons appointed to superintend and regulate the same in each of such parochial or other districts, by virtue of certain local Acts of parliament; and the pavements of many of

(*a*) By the 73rd section of 25 & 26 Vict. c. 120, p. 300, *ante*, the powers of improving and regulating streets, and for the suppression of nuisances contained in this Act, shall, so far as the same is in force and is not inconsistent with the provisions of the therein recited Acts and that Act, extend to the metropolis, including any unpaved streets, notwithstanding any exception therein contained. See note to 25 & 26 Vict. c. 102, s. 73, *ante*. This Act did not empower commissioners acting under it to take under their jurisdiction footpaths at the side of a turnpike road; *Loveridge* v. *Hodsoll*, 2 B. & Ad., 602, or to enter private property, such as Ely Place, Holborn. *Paul* v. *James*, 1 Ga. & Dav., 316. The Act contained a series of provisions relating to rating and borrowing on the credit of the rates; but as rates are now raised under the provisions of the Metropolis Local Management Acts, these have ceased to be operative. As to the construction of this Act, see *Bowerie* v. *Miles*, 1 B. & Ad. 38; *Loveridge* v. *Hodsoll*, supra; *Baddeley* v. *Gingell*, 1 Ex. 319; *Burns* v. *Carter*, 5 Bing. 429; *Curling* v. *Johnson*, 3 Moore & Sc. 498.

such streets and public places are often in a state dangerous to passengers, and frequently contain nuisances and obstructions which are offensive or injurious: And whereas it would materially tend to the remedying of such defects in the pavements, and such nuisances, if more summary means of compelling the speedy reparation of the pavements of such streets and public places, and of enforcing due regulations as to the various water and gas companies and commissioners of sewers, by whom the pavements of such streets and public places have been frequently displaced; and also if more adequate funds and authorities were given to the said several commissioners, trustees, and other persons having the superintendence and regulation of the pavements of such streets and public places; for which purposes, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act and the provisions herein contained shall extend to all streets and public places which are now paved, or which may be hereafter paved, within the cities of London and Westminster and borough of Southwark, and any other parts of the metropolis which are included within the weekly bills of mortality, and to all streets and public places which are now paved, or which may be hereafter paved, within the parishes of Saint Pancras and Saint Marylebone, in the said county of Middlesex, except only any parts thereof which may be hereinafter particularly excepted (*a*).

Act to extend to all streets within the metropolis and the bills of mortality, and Pancras and Marylebone.

VI. And be it further enacted, that in case any person being the occupier of an inhabited dwelling house, situate in any parish or place also within the jurisdiction of this Act, and rated to the relief of the poor of such parish or place wherein such dwelling house shall be situate, at the sum of 50*l.* at the least, for and in respect of such dwelling house, or in case any two persons being the occupiers of two several inhabited dwelling houses situate in any parish or place, parishes or places, also within the jurisdiction of this Act, and each of whom shall be rated to the relief of the poor of such parish or place, parishes or places, wherein such dwelling houses shall be respectively situate, at the sum of 25*l* at the least, for and in respect of their said respective dwelling houses, shall think that the pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or any part of such pavement, is in a state dangerous to passengers, or so very defective as to occasion serious incon-

Certain housekeepers in any part of the metropolis may give notice to surveyors of any dangerous or very defective pavement, and shall require the reparation thereof.

(*a*) As to these exceptions, see 25 & 26 Vict. c. 73, note, p. 300, *ante*.

venience to passengers and carriages, then and in every such case it shall and may be lawful to and for such one person alone, or for such two persons jointly, to prepare a notice, signed with his or their respective hand or hands, setting forth the number of his or their respective dwelling house or dwelling houses, and the street or public place, or streets or public places, wherein such dwelling house or dwelling houses is or are situate, and describing the part of the pavements of any stret or public place which he or they consider to be then dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and also requiring the reparation thereof, and to address such notice to any person being a surveyor for the time being of the pavements of and within the parochial or other district wherein the part of any street or public place shall be situate, the pavement whereof shall then be dangerous to passengers, or so very defective as aforesaid, and to give such notice to any such surveyor, or to leave the same for him at the dwelling house or office within such parochial or other district, inscribed on the boards to be from time to time set up by the commissioners or trustees or other persons having the control of the pavements of and within such parochial or other district, pursuant to the directions of this Act.

Surveyors or commissioners shall cause such dangerous or defective pavement to be repaired.

VII. And be it further enacted, that every person from time to time hereafter being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, to whom shall be given or for whom shall be left a notice signed and prepared as before directed, of the dangerous or very defective state as aforesaid of any part of the pavement of any street or public place in the parochial or other district in and for which he shall then be a surveyor of pavements, shall forthwith inspect the part of the pavement described in such notice given to or left for him; and if the same or any part thereof shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and if the costs and charges of and about the repairing of such dangerous or very defective pavement will not exceed the sum of 2*l.*, he shall cause such pavement to be effectually repaired within three days after the day whereon such notice shall have been given to or left for him as aforesaid; and if the costs and charges of and about the repairing of such pavement will exceed the sum of 2*l.*, but will not exceed the sum of 10*l.*, then he shall cause such dangerous or very defective pavement to be effectually repaired within seven days after the day whereon such notice shall have been given to or left for him as aforesaid; and in either of such cases, such surveyor may and shall cause such pavements to be so effectually repaired by and of his own autho-

such streets and public places are often in a state dangerous to passengers, and frequently contain nuisances and obstructions which are offensive or injurious: And whereas it would materially tend to the remedying of such defects in the pavements, and such nuisances, if more summary means of compelling the speedy reparation of the pavements of such streets and public places, and of enforcing due regulations as to the various water and gas companies and commissioners of sewers, by whom the pavements of such streets and public places have been frequently displaced; and also if more adequate funds and authorities were given to the said several commissioners, trustees, and other persons having the superintendence and regulation of the pavements of such streets and public places; for which purposes, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this Act and the provisions herein contained shall extend to all streets and public places which are now paved, or which may be hereafter paved, within the cities of London and Westminster and borough of Southwark, and any other parts of the metropolis which are included within the weekly bills of mortality, and to all streets and public places which are now paved, or which may be hereafter paved, within the parishes of Saint Pancras and Saint Marylebone, in the said county of Middlesex, except only any parts thereof which may be hereinafter particularly excepted (*a*).

Act to extend to all streets within the metropolis and the bills of mortality, and Pancras and Marylebone.

VI. And be it further enacted, that in case any person being the occupier of an inhabited dwelling house, situate in any parish or place also within the jurisdiction of this Act, and rated to the relief of the poor of such parish or place wherein such dwelling house shall be situate, at the sum of 50*l.* at the least, for and in respect of such dwelling house, or in case any two persons being the occupiers of two several inhabited dwelling houses situate in any parish or place, parishes or places, also within the jurisdiction of this Act, and each of whom shall be rated to the relief of the poor of such parish or place, parishes or places, wherein such dwelling houses shall be respectively situate, at the sum of 25*l* at the least, for and in respect of their said respective dwelling houses, shall think that the pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or any part of such pavement, is in a state dangerous to passengers, or so very defective as to occasion serious incon-

Certain housekeepers in any part of the metropolis may give notice to surveyors of any dangerous or very defective pavement, and shall require the reparation thereof.

(*a*) As to these exceptions, see 25 & 26 Vict. s. 73, note, p. 300, *ante*.

venience to passengers and carriages, then and in every such case it shall and may be lawful to and for such one person alone, or for such two persons jointly, to prepare a notice, signed with his or their respective hand or hands, setting forth the number of his or their respective dwelling house or dwelling houses, and the street or public place, or streets or public places, wherein such dwelling house or dwelling houses is or are situate, and describing the part of the pavements of any stret or public place which he or they consider to be then dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and also requiring the reparation thereof, and to address such notice to any person being a surveyor for the time being of the pavements of and within the parochial or other district wherein the part of any street or public place shall be situate, the pavement whereof shall then be dangerous to passengers, or so very defective as aforesaid, and to give such notice to any such surveyor, or to leave the same for him at the dwelling house or office within such parochial or other district, inscribed on the boards to be from time to time set up by the commissioners or trustees or other persons having the control of the pavements of and within such parochial or other district, pursuant to the directions of this Act.

Surveyors or commissioners shall cause such dangerous or defective pavement to be repaired.

VII. And be it further enacted, that every person from time to time hereafter being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, to whom shall be given or for whom shall be left a notice signed and prepared as before directed, of the dangerous or very defective state as aforesaid of any part of the pavement of any street or public place in the parochial or other district in and for which he shall then be a surveyor of pavements, shall forthwith inspect the part of the pavement described in such notice given to or left for him; and if the same or any part thereof shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and if the costs and charges of and about the repairing of such dangerous or very defective pavement will not exceed the sum of 2*l.*, he shall cause such pavement to be effectually repaired within three days after the day whereon such notice shall have been given to or left for him as aforesaid; and if the costs and charges of and about the repairing of such pavement will exceed the sum of 2*l.*, but will not exceed the sum of 10*l.*, then he shall cause such dangerous or very defective pavement to be effectually repaired within seven days after the day whereon such notice shall have been given to or left for him as aforesaid; and in either of such cases, such surveyor may and shall cause such pavements to be so effectually repaired by and of his own autho-

rity, and without any order or direction from the commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein he shall be appointed to act; and the costs and charges of such effectual reparation shall be paid by such commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein such dangerous or very defective pavement may be situate; but if it shall appear to the said surveyor, upon the inspection of the pavements described in any notice to be given to or left for him as aforesaid, that the same is really in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and that the costs and charges of and about the effectual reparation of such part of the said pavements as may then be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, will exceed the sum of 10*l.*, then and in every such case the said surveyor shall deliver a copy of the notice given to or left for him as aforesaid, to the clerk or clerks or other proper officer of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, within three days after such notice shall have been given to or left for him as aforesaid, and shall in writing require such clerk or clerks or other proper officer, duly to summon a general meeting of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, according to the usual custom of such clerk or clerks or other proper officer, or to the directions of the local Act or Acts of parliament under or by virtue whereof such commissioners or trustees or other persons having the control of the pavements of and in such parochial or other district, shall be appointed; and that such clerk or clerks, or other proper officer, within two days after he shall receive such notice and requisition from the said surveyor, shall summon or cause to be summoned a general meeting of the said commissioners or trustees, or other persons having the control of the pavements of and in such parochial or other district, to be held within four days then next, for the purpose of considering the notice given to or left for the surveyor appointed by them as aforesaid; and that the said commissioners or trustees, or other persons having the control of the pavements of such parochial or other district, or a sufficient number of them for the transaction of business, according to the provisions of the local Act or Acts of parliament under or by virtue of which they are or shall be appointed, shall assemble at their usual place of meeting pursuant to such summons, and shall then and there consider such notice so given to or left for the said surveyor of the pavements of such parochial or other district; and if such part of the pave-

ment described in such notice, or any part thereof, shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then such commissioners or trustees or other persons shall then and there direct the effectual reparation of such part of the pavements mentioned in the said notice as may be dangerous to passengers, or so very defective as aforesaid, and shall cause the same and every part thereof to be so effectually repaired, at their cost and charges, within twenty-eight days then next, if the charges of and about so effectually repairing the same will not in their judgment exceed the sum of 50*l.*, and within six weeks then next if the charges of and about so effectually repairing the same will in their judgment exceed the said sum of 50*l.*

Justices on neglect may summon surveyors, and order the repair.

VIII. And be it further enacted, that if at any time or times hereafter the pavement of any street or public place within the jurisdiction of this Act, being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, whereof a notice prepared and signed as hereinbefore is directed, shall have been given to or left for any person being a surveyor of the pavements of the parochial or other district wherein the pavement so dangerous to passengers or so very defective as aforesaid, may be situate, shall not be sufficiently repaired within the times hereinbefore appointed for the reparation thereof, (that is to say,) within three days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 2*l.*, and within seven days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 10*l.*, and within twenty-eight days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 50*l.*, and within six weeks next after the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would exceed the sum of 50*l.*, then it shall and may be lawful to and for the person or persons by whom any notice signed as hereinbefore is directed shall have been given or left as aforesaid, to apply and complain to any two justices of the peace acting for the city, borough, or county wherein the pavement of the street or public place described in the notice so given or left as aforesaid shall be situate, and that upon proof upon oath, by one or more credible witness or witnesses, that a notice, prepared and signed as hereinbefore is directed, had been given to or left for a person appointed and notified to be a surveyor of the pavements of such parochial or other district wherein the

pavement described in such notice may be situate, and according to the directions of this Act, and that the part of the pavements in any street or public place described in such notice, and being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, had not been sufficiently repaired within the time hereinbefore limited by this Act, according to the costs and charges which must be incurred in and about such reparation; then such justices of the peace, by a summons under their hands, shall require the said person, being appointed and notified to be a surveyor of the pavements for the parochial or other district wherein the pavement of any street or public place dangerous to passengers, or so very defective as aforesaid, shall be situate, to or for whom the said notice, prepared and signed as aforesaid, shall have been given or left, according to the directions of this Act, to appear before them the said justices, at a place and time to be mentioned in such summons (and the time being twenty-four hours at the least after the said summons shall have been given to the said surveyor, or shall have been left for him at his dwelling house or office within the parochial or other district the pavement whereof he shall be appointed to survey, inscribed on the boards herein before directed to be set upin every parochial and other district within the jurisdiction of this Act), and then and there to show cause why the pavement described in the said notice hath not been sufficiently repaired according to such notice within the times hereinbefore by this Act limited, according to the expense which must be incurred in and about such repair; and that if the said surveyor, or some person authorized by him, shall not attend before the said justices at the time and place mentioned in such summons, or if he or such other person authorized by him shall then and there attend, and shall not show to them the said justices a sufficient cause or sufficient causes why the said pavement described in the said notice given to or left for the said surveyor as hereinbefore is directed, and every part thereof, have not been sufficiently repaired according to such notice, then and upon proof upon oath by two or more credible witnesses that the pavement described in the said notice is then dangerous to passengers, or so very defective as aforesaid, and that the same is situate within the parochial or other district for which the said surveyor shall have been appointed and notified as appointed to act, it shall and may be lawful to and for the said justices by order under their hands and seals, to order and direct that the said surveyor shall pay to the person or persons by whom the said notice shall have been signed as aforesaid, such sum of money as he or they shall have legally expended for the cost and charges of such summons and order, and which said sum of money so by the said justices ordered to be

paid by the said surveyor shall and may be recovered in the same manner in which any other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act; and the said justices shall also then and there, by an order under their hands and seals, order the said surveyor to sufficiently repair or cause to be repaired all the pavements described in the said notice being in a state dangerous to passengers, or so very defective as aforesaid, and being in the parochial or other district wherein he the said surveyor shall have been appointed to act as surveyor of the pavement, within three days then next if the costs and charges of and about such repair will not exceed the sum of 2*l.*, and within seven days then next if the costs and charges of and about the said repair will not exceed the sum of 10*l.*, and within twenty-eight days then next if the costs and charges of and about such repair will exceed the sum of 10*l.* but will not exceed the sum of 50*l.*, and within six weeks then next if the cost and charges of and about such repair will exceed the sum of 50*l.*; and the said order of the said two justices of the peace, within twenty-four hours after the same shall be made, shall be given to the said surveyor, or left for him at his dwelling house or office within the parish or other district the pavement whereof he shall be appointed to survey, inscribed on the said boards hereinbefore directed to be set up, and shall be obeyed and performed by him; and he the said surveyor shall sufficiently repair the said pavements, or cause the same to be sufficiently repaired, within the time to be directed by the said order, at the costs and charges of the commissioners or trustees or other persons having the control of the pavements of that parochial or other district wherein the pavements shall be situate which by such order shall be so ordered to be repaired; but if the said surveyor, or any person authorized by him, shall attend before the said justices at the time and place mentioned in such summons, and shall show to the said justices that such notice was not prepared and signed and given or left according to the directions of this Act, or that the pavement described in such notice was not in a state dangerous to passengers, or was not in a state so very defective as to occasion serious inconvenience to passengers and carriages, either at the time of the delivery of such notice, or at the time of the application of the person or persons signing such notice to such justices, or shall then and there show to such justices such other cause or causes as they shall deem sufficient why the said pavements have not been repaired according to such notice, then and in any or either of the said cases the said justices shall dismiss the said complaint of the person or persons by whom the said notice shall have been signed as aforesaid, and by an order under their hands and seals shall declare that such person or persons having signed the said notice, and having made the ap-

plication and complaint to them the said justices, hath or have forfeited the sum of 40*s.*, and shall direct the same sum of 40*s.* to be paid by him or them to the said surveyor or other person authorized by him, then attending before the said justices, for his own use and benefit; and such sum of 40*s.* so forfeited shall be recovered in the manner in which other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, and be it hereby also enacted, that if it shall appear to the said justices of the peace that the costs and charges of and about the repair of any pavement so by them ordered to be repaired as aforesaid will exceed the sum of 50*l.*, or that such reparation cannot be probably completed within six weeks then next, then and in such case, or under any other special circumstances, it shall and may be lawful to and for the said justices to extend any of the times for completing the repair of any such pavement to some other time beyond the period of six weeks, or beyond the other periods mentioned by this Act, at their discretion, and so that such repair be completed with all the expedition which the extent of such repair and such special circumstances, in the judgment of the said justices of the peace, will permit.

Surveyors neglecting to attend on justices, or disobeying their orders, shall be fined; and shall be disqualified on a third offence.

IX. And be it further enacted, that if any person from time to time hereafter, being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, and being summoned by any two justices of the peace as hereinbefore is directed, shall refuse or neglect, either personally or by some person authorized by him, to attend before such justices at the time and place to be mentioned in such summons, or shall refuse or neglect to perform and obey any order which may be legally made by such two justices of the peace, under their hands and seals, as hereinbefore is directed, and which shall direct, according to the provisions of this Act, the reparation of any pavements dangerous to any passengers, or so very defective as to occasion serious inconvenience to passenges and carriages in any streets or public places within the parochial or other district for which he shall be appointed to act as a surveyor of the pavements, and to perform and obey the same within the time specified therein (be having notice thereof as hereinbefore is directed, and not being prevented from the observance and performance of such order by frost or other unavoidable circumstances, or by the neglect or proceedings of any water or gas company or commissioners of sewers), then and in such case the said person being the surveyor as aforesaid shall forfeit and pay for such refusal or neglect any sum not exceeding 10*l.* for the first offence, and a sum not exceeding 20*l.* for the second offence, and a sum not exceeding 30*l.* for every third offence, to be recovered

in such manner as other penalties or forfeitures are by this Act hereinafter directed to be recovered, and to be paid, when recovered, to the churchwardens or overseers of the poor of the parish or district wherein any such dangerous or defective pavement shall be situate, and to be by them applied to and for the use of the poor of such parish or district, and in aid of the rates for the relief of the poor of such parish or district, and to no other person or persons, and for no other use or purpose whatsoever; and such person who shall be guilty of such third offence shall thereafter become disqualified from acting in the said office of a surveyor of the pavements in the same or in any other parochial or other district within the jurisdiction of this Act, and from being re-appointed or appointed thereto, and from acting therein, either gratuitously or otherwise, or under any pretence whatsoever unless he shall so act under the direction and by the command of the commissioners, trustees, or other persons by whom he shall have been appointed: Provided always, that all costs, charges, and expenses which such person, being the surveyor of the pavements of any parochial or other district, shall incur or expend in and about the observance and performance of any such order made by the said two justices of the peace as aforesaid for the reparation of the pavements in such parochial or other district being dangerous to passengers or very defective as aforesaid, as hereinbefore is directed, or which he shall incur or be put unto in consequence of his refusal or neglect to perform and obey any such order by the directions in writing of the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district for which he may be appointed to act, shall be forthwith paid or reimbursed to him by such commissioners or trustees, or other persons, out of the monies which they shall then possess, or shall first thereafter receive, by virtue or on account of any rates or assessments theretofore or thereafter made for and towards the expenses of the paving or reparation of the pavement of such parochial or other district, or otherwise, by virtue of any local Act or Acts of parliament, or by virtue of this Act.

XII. And be it further enacted, that all new or complete mains or pipes for the conveyance of water, or inflammable air or gas, which after the passing of this Act shall be laid down beneath the surface of any streets or public places within the jurisdiction of this Act, by or on account of any water or gaslight company, and whether such new or complete main of pipes shall or shall not be substituted for or added to any

New mains of water pipes &c. to be made of certain sizes &c. Powers of Directors &c. to lay down mains &c.

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a The provisions contained in this section relative to breaking up pavements seem to be extended by sect. 109 of 18 & 19 Vict. c. 120, *ante*, p. 76.

other complete main or mains of pipes for the conveyance of water or inflammable air or gas, theretofore laid down for the conveyance of water, or of inflammable air or gas, shall consist and be made of iron alone, and of no other material; and the pavements of any streets or public places within the jurisdiction of this Act, or any part thereof, shall not be broken or taken up for the purpose of laying down any new main of pipes, for the conveyance of water or of inflammable air or gas, during any part of the months of December, January, or February in any year; and also that from and after ten years from the passing of this Act all and every new main pipe and pipes for the conveyance of water, or of inflammable air or gas, which shall be laid down by or on account of any water or gaslight company, or other persons, shall consist and be made of iron alone, and of no other material; and all and every new service and other pipes shall not consist or be made of wood, but shall consist or be made of iron or lead, or of some durable material; and that if any water or gaslight company, or any other person, shall break or take up, or cause to be broken or taken up, any such pavement for the purposes aforesaid during the months aforesaid, or shall lay or cause to be laid down any pipes consisting or made of any materials in violation of the provisions of this Act, then and in every such case the company or other person so offending shall forfeit and pay the sum of 5*l.* for every square foot of pavement which shall be so broken or taken up by them or on their account, and the like sum for every foot in length of pipe which shall be so laid down consisting or made of any such material; and which said forfeitures and penalties shall be recoverable in the same manner in which other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, that nothing herein contained shall extend or be construed to extend to hinder or prevent any water company, at any time within or after the space of ten years from the passing of this Act, from repairing all or any of their present mains or service pipes, which are not constructed of iron, with wood or such other materials whereof such mains or pipes are now constructed.

Plans of pipes and sewers may be examined by surveyors of pavement.

XIII. And be it further enacted, that it shall and may be lawful to and for any person appointed to act as a surveyor of the pavements in any parochial or other district within the jurisdiction of this Act, and to and for any other person or persons appointed by the commissioners or trustees, or other persons having the control of the pavements of any such parochial or other district, when he shall be directed so to do by the commissioners or trustees, or other persons by whom he or they shall be appointed to act, from time to time and at any times

between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon of any day not being a Sunday or holiday appointed by law, at the office or counting-house of any water or gaslight company, any of whose pipes for the conveyance of water or of inflammable air or gas shall then be laid beneath the surface of any of the streets or public places within each of such parochial or other districts, the pavements whereof shall be under the control of such several commissioners or trustees, or other persons, or for which any such surveyor shall be appointed to act, and at the office of any commissioners of sewers then having jurisdiction over the common and public drains and sewers within every such parochial or other district, to examine and inspect any and every map or plan, or draft or survey, or delineation or description of all and every the main of pipes and pipes belonging to any of such water or gaslight companies, then possessed by them, or being in their custody or power, and any and every map or plan, or draft or survey, delineation or description, of the common and public drains or sewers being within such parochial or other district, and under the jurisdiction of such commissioners of sewers, then possessed by them, or being in their custody or power, he such surveyor for the time being, or such other person or persons appointed by the said commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, having given to a clerk or secretary of any such company or commissioners of sewers, or having left at the office or counting-house of such company or commissioners of sewers, two days previous notice in writing of his or their intention to attend at the office or counting-house of such companies or commissioners of sewers for the purpose aforesaid; and that the secretary or clerk or some other officer of such company or commissioners of sewers, shall then and there produce and show, or cause to be produced and shown, unto such surveyor or other person or persons, all and every the maps, plans, drafts, surveys, delineations, and descriptions aforesaid, in the custody or power of the said company or commissioners of sewers, and shall permit him or them then and there to take extracts therefrom, or copies thereof, or of and from any of them, or any part of any of them, so far as may relate to the mains of pipes or pipes, and to the public or common sewers or drains which shall be laid or be beneath the surface of the streets or public places within the parochial or other district for which such surveyor of pavements, or other person or persons appointed by any such commissioners or trustees, or other persons having the control of pavements, shall be deputed or directed to act.

XIV. And be it further enacted, that all and every the re- Officers c

&c. to notify their names and places of abode to surveyors of pavements.

cretaries or clerks, surveyors or inspectors, and the several and respective turncocks, employed or appointed, or hereafter being employed or appointed by all and every the water and gaslight companies, any of whose pipes shall be laid beneath the surface of any street or public place in any parochial or other district within the jurisdiction of this Act, and also all and every the clerk and clerks, secretary and secretaries appointed or being hereafter appointed by any commissioners of sewers whose jurisdiction shall extend over the common or public drains or sewers within every such parochial or other district, within forty days next after the passing of this Act, or within the space of five days next after he or they shall be hereafter severally appointed to such several offices, situations, or employments, shall give notice in writing to each and every of the clerk or clerks to the commissioners or trustees, or other persons having the control of the pavements, or to the surveyor and surveyors of the pavements of each parochial or other district, beneath the surface of the streets or public places wherein the mains or pipes of such company, or any of them, shall be laid, or there shall be any common or public drains or sewers within the jurisdiction of such commissioners of sewers, of his, their, and every of their christian and surnames and place or places of abode, and of the company or commissioners of sewers by whom he or they is or are, or hath or have been so appointed or employed, and also of the place which is appointed as the office or counting-house of the said company or commissioners of sewers; and that in case any such person or persons shall neglect to give such notice within the respective times aforesaid, every such person or persons so offending in either of the said cases shall forfeit and pay the sum of 10*l.*, to be recovered in the same manner in which other penalties and forfeitures are hereafter directed to be recovered by virtue of this Act.

Surveyor may require repair of pipes and drains when defective.

XV. And be it further enacted, that when and so often as it shall appear to any person appointed to act as a surveyor of pavements in any parochial or other district within the jurisdiction of this Act, that any pipe or pipes, stopcock, plug, or other thing belonging to any water or gaslight company, or that any public sewer beneath the surface of the pavement of any street or public place within such parochial or other district, be broken or damaged, it shall be lawful for such surveyor, and he is hereby required to give immediate notice, signed by himself, to the company or commissioners of sewers to whom it may appear to him that such pipe or stopcock, plug, or other thing, or sewer, doth or may belong, by either giving such notice to a clerk or secretary, or to a turncock of such company, or to a clerk or secretary of such commissioners of sewers, or to some or one of them, or by leaving

Notice to be given to repair them.

the same at the place or places of abode of some or one o
them, or at the office or counting-house of such company or
commissioners of sewers, and shall require that such pipe,
*stop*cock, plug, or other thing, or sewer, be examined, and, if
needful, that such pipe, stopcock, plug, or other thing be
repaired, altered, amended, or renewed, and such sewer be re-
paired by such company, or commissioners of sewers; and
that within forty-eight hours after such notice shall be so
given or left as aforesaid, the said company or commissioners
of sewers, to or for whom, or to or for whose officer or ser-
vant such notice shall have been given or left as aforesaid,
shall cause to be taken up the pavement of the street or public
place beneath which the pipe, stopcock, plug, or other defec-
tive thing, or sewer, shall be, and shall cause the ground to
be opened, and shall also cause the said pipe, stopcock, plug,
or other thing to be substantially repaired, altered, amended,
or renewed, or the said sewer to be examined, and, if necessary,
to be substantially repaired, and the ground properly filled in
with hard rubbish or other good materials, and rammed down,
within forty-eight hours next after such notice shall be given
or left as aforesaid, or with all convenient expedition, in
the judgment of the commissioners, trustees, or other per-
sons having the control of the pavements in the parochial or
other district wherein such pavement, street, or public place
shall be situate, and to their satisfaction, or the satisfaction of
any three or more of them; and also within twelve hours after
such pipe, stopcock, plug, or other thing shall be so substan-
tially repaired, altered, amended, or renewed, or such sewer
shall be so substantially required, and the ground above the
same shall be so filled in and rammed down, the said com-
pany or commissioners of sewers shall cause notice thereof
signed by the clerk or secretary to such company or commis-
sioners of sewers, to be given to the said surveyor of pave-
ments, or to the pavior or paviors or other persons then em-
ployed or appointed by the commissioners or trustees, or oth
persons having the control of the pavements in such paroch
or other district, to pave and repair the pavements within su
parochial or other district, as the said commissioners or tr
tees or other persons for the time being may from time to t
direct, that such examination, and, if necessary, such rep
tion, alteration, amendment, or renewal, hath been made
suant to such notice of the surveyor of pavements, and
the ground hath been refilled and rammed down, thus
pavement in such street or public place may be forthwi
laid in the manner directed by this Act; and in case the
or gas company, or commissioners of sewers, to or for
such notice of the surveyor of pavements shall hav
given or left as aforesaid, and to whom such pipe, st
plug, or other thing, or sewer, referred to in such not

giving notice thereof to the pavior;

belong, shall neglect to cause the same to be repaired, altered, or amended, or renewed, as the case may be, and the ground to be filled in and rammed down to the satisfaction of the said commissioners, trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them, within the time hereinbefore limited and appointed for those purposes; or shall neglect to give or cause to be given notice thereof as aforesaid to the said surveyor of the pavements, or to the pavior or paviors, or other persons employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavement within such parochial or other district; then the said company or commissioners of sewers shall for the first neglect and offence forfeit and pay the sum of 5*l.*, and for the second neglect and offence shall forfeit and shall pay the sum of 8*l.*, and for the third and every subsequent neglect and offence shall forfeit and shall pay the sum of 10*l.*, to be recovered in the same manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act.

and if such request should not be made to the proper parties, subsequent information shall be given to them.

XVI. Provided always, and be it further enacted, that in case it shall happen and it shall be discovered, after any pavement in any street or public place shall have been taken up, and the ground shall have been opened, that any pipe, stopcock, plug, or other thing, beneath the surface of the pavement of any street or public place, which shall have appeared to any surveyor of pavements to require to be repaired, altered, amended, or renewed, shall not belong to the water or gas company to or for whom such notice for the reparation, alteration, amendment, or renewal thereof as aforesaid shall have been given or left as is hereinbefore directed by the said surveyor, but to some other water or gas company, or to some other persons, then such company to or for whom the said notice of the said surveyor of pavements shall have been given or left, within twenty-four hours after the notice from the said surveyor of pavements shall have been given or left as aforesaid, shall cause a notice, signed by the secretary or clerk, to be given in the same manner hereinbefore directed as to the service of the original notice to the company or other persons to whom the pipe, stopcock, plug, or other thing shall appear to belong, which did appear to the said surveyor of pavements to require reparation, alteration, amendment, or renewal, and shall thereby require them to obey and perform and comply with the said original notice from the said surveyor of pavements, instead of the company to whom such original notice had been given; and that such company or other persons to whom such pipe, stopcock, plug, or other thing, shall belong, shall reimburse and pay on demand to the first-mentioned company to or for

ment described in such notice, or any part thereof, shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then such commissioners or trustees or other persons shall then and there direct the effectual reparation of such part of the pavements mentioned in the said notice as may be dangerous to passengers, or so very defective as aforesaid, and shall cause the same and every part thereof to be so effectually repaired, at their cost and charges, within twenty-eight days then next, if the charges of and about so effectually repairing the same will not in their judgment exceed the sum of 50*l.*, and within six weeks then next if the charges of and about so effectually repairing the same will in their judgment exceed the said sum of 50*l.*

Justices on neglect may summon surveyors, and order the repair.

VIII. And be it further enacted, that if at any time or times hereafter the pavement of any street or public place within the jurisdiction of this Act, being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, whereof a notice prepared and signed as hereinbefore is directed, shall have been given to or left for any person being a surveyor of the pavements of the parochial or other district wherein the pavement so dangerous to passengers or so very defective as aforesaid, may be situate, shall not be sufficiently repaired within the times hereinbefore appointed for the reparation thereof, (that is to say,) within three days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 2*l.*, and within seven days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 10*l.*, and within twenty-eight days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of 50*l.*, and within six weeks next after the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would exceed the sum of 50*l.*, then it shall and may be lawful to and for the person or persons by whom any notice signed as hereinbefore is directed shall have been given or left as aforesaid, to apply and complain to any two justices of the peace acting for the city, borough, or county wherein the pavement of the street or public place described in the notice so given or left as aforesaid shall be situate, and that upon proof upon oath, by one or more credible witness or witnesses, that a notice, prepared and signed as hereinbefore is directed, had been given to or left for a person appointed and notified to be a surveyor of the pavements of such parochial or other district wherein the

and taken away off and from the surface of any and every street or public place by the water or gaslight company, or commissioners of sewers, or by the officers or servants of the company, or commissioners of sewers, by whom or by whose order, or by whose officers or servants, or for whose office or works, all or any such pipes or other materials or things shall have been brought to and placed on the surface of such streets or public places, or any of them, and at their costs and charges, within forty-eight hours after such company or commissioners of sewers shall have been required to remove and take away the same by the commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, or any three or more of them by a notice signed by three or more of such commissioners or trustees or other persons, and given to such company or commissioners of sewers, or left for them at the dwelling-house or place of abode of any secretary or clerk or turncock employed by such company, or of a clerk or secretary to such commissioners of sewers, or at the office or counting-house of such company or commissioners of sewers; and that in case any company or commissioners of sewers shall at any time or times neglect to comply with any and every such notice, and to obey all and every the directions which the said commissioners or trustees or other persons having the control of the pavements in any parochial or other district, or any of them, are by this Act authorized and empowered to give, then and in every or any such case such company or commissioners of sewers shall for the first neglect and offence forfeit and shall pay the sum of 5*l.*, and for the second neglect and offence shall forfeit and shall pay the sum of 8*l.*, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of 10*l.*, to be recovered in the same manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act.

Rubbish and obstructions occasioned in streets by the repairs of pipes, &c. to be speedily removed.

XVIII. And be it further enacted, that all dirt, gravel, rubbish, and other things, which at any time or times after the passing of this Act, shall be placed, collected, or left by or by means of any water or gaslight company or commissioners of sewers, or of any repairs or other works executed and performed or intended to be executed and performed by their officers or servants, or by their orders or directions, or on their account, in any streets or public places in any parochial or other district within the jurisdiction of this Act, by the taking up of the pavement of such streets or public places, or any of them, or by opening the ground beneath the surface of such streets or public places, or by the execution of the works of any water or gaslight company or otherwise, or which shall be in anywise consequent thereon or incident

paid by the said surveyor shall and may be recovered in the same manner in which any other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act; and the said justices shall also then and there, by an order under their hands and seals, order the said surveyor to sufficiently repair or cause to be repaired all the pavements described in the said notice being in a state dangerous to passengers, or so very defective as aforesaid, and being in the parochial or other district wherein he the said surveyor shall have been appointed to act as surveyor of the pavement, within three days then next if the costs and charges of and about such repair will not exceed the sum of 2*l.*, and within seven days then next if the costs and charges of and about the said repair will not exceed the sum of 10*l.*, and within twenty-eight days then next if the costs and charges of and about such repair will exceed the sum of 10*l.* but will not exceed the sum of 50*l.*, and within six weeks then next if the cost and charges of and about such repair will exceed the sum of 50*l.*; and the said order of the said two justices of the peace, within twenty-four hours after the same shall be made, shall be given to the said surveyor, or left for him at his dwelling house or office within the parish or other district the pavement whereof he shall be appointed to survey, inscribed on the said boards hereinbefore directed to be set up, and shall be obeyed and performed by him; and he the said surveyor shall sufficiently repair the said pavements, or cause the same to be sufficiently repaired, within the time to be directed by the said order, at the costs and charges of the commissioners or trustees or other persons having the control of the pavements of that parochial or other district wherein the pavements shall be situate which by such order shall be so ordered to be repaired; but if the said surveyor, or any person authorized by him, shall attend before the said justices at the time and place mentioned in such summons, and shall show to the said justices that such notice was not prepared and signed and given or left according to the directions of this Act, or that the pavement described in such notice was not in a state dangerous to passengers, or was not in a state so very defective as to occasion serious inconvenience to passengers and carriages, either at the time of the delivery of such notice, or at the time of the application of the person or persons signing such notice to such justices, or shall then and there show to such justices such other cause or causes as they shall deem sufficient why the said pavements have not been repaired according to such notice, then and in any or either of the said cases the said justices shall dismiss the said complaint of the person or persons by whom the said notice shall have been signed as aforesaid, and by an order under their hands and seals shall declare that such person or persons having signed the said notice, and having made the ap-

said pavement of any street or public place until the same pavement shall be relaid and repaved, at their costs and charges (unless the said works shall be completed during the day on which the said works shall be commenced) shall place or cause to be placed such posts, rails, bars, or ropes, lanthorns and watchmen, in any and every such street or public place, and adopt and execute all such other means for the prevention of any accidents or mischief to any passengers, horses, cattle, or carriages, and every other public inconvenience, to the satisfaction of the commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein any such street or public place shall be situate, or of a surveyor of pavements or other officer or person appointed by them, in the manner and whenever from time to time such company or commissioners of sewers shall be required so to do by such surveyor of the pavements, or any officer or person appointed by the commissioners, trustees, or other persons having the control of the pavements in such parochial or other district, by any notice to be signed by him or them, and given to such company or commissioners of sewers, or left for them at the dwelling house or place of abode of any secretary or clerk or turncock employed by such company, or of any clerk or secretary to any such commissioners of sewers, or at any office or counting-house of such company or commissioners of sewers; and that in case any such company or commissioners of sewers, for three hours after any such notice as aforesaid, signed as aforesaid, be given or left as aforesaid, shall neglect to place, or shall neglect to continue for the time before limited, in any street or public place, such posts, rails, bars, or ropes, lanthorns and watchmen, or to adopt and execute any and every other means for the purposes aforesaid, to the satisfaction of the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district wherein any such street or public place shall be situate, or of a surveyor of pavements or other officer or person appointed by them, by whom any such notice shall be signed, pursuant to and in the manner directed by any such notice as aforesaid, given or left as aforesaid, then and in every such case the said company or commissioners of sewers shall for every such neglect and offence forfeit and pay the sum of 5*l*., to be also recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Breaches in the pavement may be inclosed.

XX. And be it hereby further enacted, that in case at any time or times hereafter any pavement in any streets or public places in any parochial or other district within the jurisdiction of this Act shall, by the breaking or falling-in or decay of any sewer or drain, cesspool or watercourse, or any pipe or

in such manner as other penalties or forfeitures are by this Act hereinafter directed to be recovered, and to be paid, when recovered, to the churchwardens or overseers of the poor of the parish or district wherein any such dangerous or defective pavement shall be situate, and to be by them applied to and for the use of the poor of such parish or district, and in aid of the rates for the relief of the poor of such parish or district, and to no other person or persons, and for no other use or purpose whatsoever; and such person who shall be guilty of such third offence shall thereafter become disqualified from acting in the said office of a surveyor of the pavements in the same or in any other parochial or other district within the jurisdiction of this Act, and from being re-appointed or appointed thereto, and from acting therein, either gratuitously or otherwise, or under any pretence whatsoever unless he shall so act under the direction and by the command of the commissioners, trustees, or other persons by whom he shall have been appointed: Provided always, that all costs, charges, and expenses which such person, being the surveyor of the pavements of any parochial or other district, shall incur or expend in and about the observance and performance of any such order made by the said two justices of the peace as aforesaid for the reparation of the pavements in such parochial or other district being dangerous to passengers or very defective as aforesaid, as hereinbefore is directed, or which he shall incur or be put unto in consequence of his refusal or neglect to perform and obey any such order by the directions in writing of the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district for which he may be appointed to act, shall be forthwith paid or reimbursed to him by such commissioners or trustees, or other persons, out of the monies which they shall then possess, or shall first thereafter receive, by virtue or on account of any rates or assessments thentofore or thereafter made, for and towards the expenses of the paving or reparation of the pavement of such parochial or other district, or otherwise, by virtue of any local Act or Acts of parliament, or by virtue of this Act.

New mains of water pipes, &c. to be made of iron, and not laid down during the months of December, January, or February(*a*).

XII. And be it further enacted, that all new or complete mains or pipes for the conveyance of water, or inflammable air or gas, which after the passing of this Act shall be laid down beneath the surface of any streets or public places within the jurisdiction of this Act, by or on account of any water or gaslight company, and whether such new or complete main of pipes shall or shall not be substituted for or added to any

(*a*) The provisions contained in this section relative to breaking up pavements, seem to be superseded by sect. 109 of 18 & 19 Vict. c. 120, *ante*, p. 76.

Works neglected by companies, &c. may be executed by surveyors of pavements.

XXII. And be it further enacted, that in case any water or gaslight company, or commissioners of sewers, at any time or times after the passing of this Act, shall neglect to take up the pavement in any street or public place in any parochial or other district within the jurisdiction of this Act; or to open any ground beneath the surface of such street or public place; or substantially to repair, alter, or amend, or renew any pipe, plug, stopcock, or other thing, or any public sewer, as the case may be; or to give the notices required by this Act to any other company, or to any paviors, surveyors of pavements, or other persons; or to remove or take away any pipes, or other materials or things from any street or public place; or to collect and carry away or remove all dirt, gravel, filth, rubbish, and other things, from any street or public place; or to place and continue posts, rails, bars, or ropes, lanthorns and watchmen, in any street or public place; or to do and execute all and every such works and things, and all or any other works and things directed and required by this Act to be done and executed by any such company or commissioners of sewers, and pursuant to any notice given or left as herein directed by any commissioners or trustees, or other persons having the control of the pavements in the streets or public places within any parochial or other district within the jurisdiction of this Act, or by the surveyors of pavements, or other officers or persons appointed by them or otherwise, and to their respective satisfaction, and within the several times and periods specified and directed by this Act; then and in every or any of such cases, and at all times afterwards, it shall and may be lawful to and for any surveyor of the pavement of the parochial or other district wherein the street or public place shall be situate as to which any such neglect shall occur, and all and every such surveyors are hereby empowered and required, forthwith to cause all and every such several works, matters, and things, which shall not be executed and performed by every such company or commissioners of sewers, or which shall not be well, substantially, and effectually executed and performed to his or their satisfaction, or to the satisfaction of the commissioners or trustees, or other persons by whom he or they shall be appointed, within the times and periods limited by this Act to be well and effectually performed, to his or their satisfaction, or to the satisfaction of such commissioners or trustees, or other persons as aforesaid, as herein provided, at the costs and charges of such company or commissioners of sewers who shall have so neglected well, substantially, and effectually to perform and execute the same, and every of them, and every part thereof; and that such costs and charges and every of them shall be reimbursed and paid by any and every such company or commissioners of sewers to such surveyor or surveyors of pavements, or to the

between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon of any day not being a Sunday or holiday appointed by law, at the office or counting-house of any water or gaslight company, any of whose pipes for the conveyance of water or of inflammable air or gas shall then be laid beneath the surface of any of the streets or public places within each of such parochial or other districts, the pavements whereof shall be under the control of such several commissioners or trustees, or other persons, or for which any such surveyor shall be appointed to act, and at the office of any commissioners of sewers then having jurisdiction over the common and public drains and sewers within every such parochial or other district, to examine and inspect any and every map or plan, or draft or survey, or delineation or description of all and every the main of pipes and pipes belonging to any of such water or gaslight companies, then possessed by them, or being in their custody or power, and any and every map or plan, or draft or survey, delineation or description, of the common and public drains or sewers being within such parochial or other district, and under the jurisdiction of such commissioners of sewers, then possessed by them, or being in their custody or power, he such surveyor for the time being, or such other person or persons appointed by the said commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, having given to a clerk or secretary of any such company or commissioners of sewers, or having left at the office or counting-house of such company or commissioners of sewers, two days previous notice in writing of his or their intention to attend at the office or counting-house of such companies or commissioners of sewers for the purpose aforesaid; and that the secretary or clerk or some other officer of such company or commissioners of sewers, shall then and there produce and show, or cause to be produced and shown, unto such surveyor or other person or persons, all and every the maps, plans, drafts, surveys, delineations, and descriptions aforesaid, in the custody or power of the said company or commissioners of sewers, and shall permit him or them then and there to take extracts therefrom, or copies thereof, or of and from any of them, or any part of any of them, so far as may relate to the mains of pipes or pipes, and to the public or common sewers or drains which shall be laid or be beneath the surface of the streets or public places within the parochial or other district for which such surveyor of pavements, or other person or persons appointed by any such commissioners or trustees, or other persons having the control of pavements, shall be deputed or directed to act.

Officers of companies,

XIV. And be it further enacted, that all and every the se-

such commissioners or trustees or other persons, or by such person or persons as they may from time to time appoint for that purpose, under the inspection and direction and to the satisfaction of the said surveyor of pavements to the said commissioners or trustees or other persons, for the periods following; (that is to say,) all such part or parts of the pavements of any such street or public place, which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of making and laying down any main or mains of pipes, or of substituting iron for wooden pipes, or of making any sewer, vault, or drain, for twelve calendar months next ensuing the breaking and taking up of the same pavements; and all such part or parts of the pavements of any such street or public place, which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of altering the position of or of repairing any pipes, stopcocks, or plugs, or of repairing, cleansing, or altering any sewer, vault, or drain, for three calendar months next ensuing the breaking and taking up the same pavements; and that the costs, charges, and expenses of taking out any ground, and filling in hard rubbish or other good materials, and of repairing and keeping in necessary repair for the periods aforesaid all or any such pavement in manner aforesaid, and all the expenses of cartage, and all other charges and expenses attending the same, as well as all costs and charges which may be incurred pursuant to the directions of this Act by any surveyor of pavements in and about executing and performing any works or matters neglected to be executed and performed by any company or commissioners of sewers, as hereinbefore directed, shall be ascertained and fixed from time to time by the surveyor of pavements to such commissioners or trustees or other persons within whose parochial or other districts such works or other matters shall have been performed and executed, or such pavements shall have been broken up and repaved; and such costs and charges from time to time, whenever directed by the said commissioners or trustees or other persons, shall be certified by their clerk or clerks, surveyor or surveyors of pavements, or one of them, or some other officer or servant appointed by them, by a note to be given to the said company or commissioners of sewers, or other persons who shall have neglected to perform or execute such works, or by whom or by whose orders or authorities or on whose account such pavement shall have been broken or taken up, or to be left for such company, commissioners of sewers, or other person or persons, at their dwelling house or dwelling houses, or place or places of abode, or at any office or counting-house of any

the same at the place or places of abode of some or one of them, or at the office or counting-house of such company or commissioners of sewers, and shall require that such pipe, stopcock, plug, or other thing, or sewer, be examined, and, if needful, that such pipe, stopcock, plug, or other thing be repaired, altered, amended, or renewed, and such sewer be repaired by such company, or commissioners of sewers; and that within forty-eight hours after such notice shall be so given or left as aforesaid, the said company or commissioners of sewers, to or for whom, or to or for whose officer or servant such notice shall have been given or left as aforesaid, shall cause to be taken up the pavement of the street or public place beneath which the pipe, stopcock, plug, or other defective thing, or sewer, shall be, and shall cause the ground to be opened, and shall also cause the said pipe, stopcock, plug, or other thing to be substantially repaired, altered, amended, or renewed, or the said sewer to be examined, and, if necessary, to be substantially repaired, and the ground properly filled in with hard rubbish or other good materials, and rammed down, within forty-eight hours next after such notice shall be given or left as aforesaid, or with all convenient expedition, in the judgment of the commissioners, trustees, or other persons having the control of the pavements in the parochial or other district wherein such pavement, street, or public place shall be situate, and to their satisfaction, or the satisfaction of any three or more of them; and also within twelve hours after such pipe, stopcock, plug, or other thing shall be so substantially repaired, altered, amended, or renewed, or such sewer shall be so substantially required, and the ground above the same shall be so filled in and rammed down, the said company or commissioners of sewers shall cause notice thereof, signed by the clerk or secretary to such company or commissioners of sewers, to be given to the said surveyor of pavements, or to the pavior or paviors or other persons then employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavements within such parochial or other district, as the said commissioners or trustees or other persons for the time being may from time to time direct, that such examination, and, if necessary, such reparation, alteration, amendment, or renewal, hath been made pursuant to such notice of the surveyor of pavements, and that the ground hath been refilled and rammed down, that the pavement in such street or public place may be forthwith relaid in the manner directed by this Act; and in case the water or gas company, or commissioners of sewers, to or for whom such notice of the surveyor of pavements shall have been given or left as aforesaid, and to whom such pipe, stopcock, plug, or other thing, or sewer, referred to in such notice shall

Penalty on company to whom the pipes belong for not repairing them, and

to administer, or to recover the same and every part thereof in any court or courts of requests or county court, or by any action or actions in any court of law; and that in any such proceedings in any court or courts of requests or county court, or in any such action or actions, it shall be only necessary for the said commissioners or trustees or other persons, or the complainant or complainants, plaintiff or plaintiffs, in any such proceedings or actions, to prove the service of such note pursuant to the directions of this Act, to entitle him or them to recover by such proceedings, or by such action or actions, from the said company or commissioners of sewers or other person or persons, double the full amount of such costs and charges so certified by such note, unless the said company or commissioners of sewers or other person or persons shall prove, upon the return of the summons in such proceedings in any court or courts of requests or county court, or on the trial of such action or actions, the actual payment of the full amount of the costs and charges so certified, within two months after the said note was left as aforesaid, to the person or persons thereby appointed to receive the same, and that in any and every such action or actions no essoign, protection, or wager of law, or plea in abatement, or any dilatory plea, or more than one imparlance, shall be allowed.

Commissioners, &c., may pave streets within their districts, paving materials being vested in them (*a*);

LII. And be it further enacted, that it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, from time to time to pave and keep in repair, or cause to be paved and kept in repair, or to enter into any contract or contracts for paving and keeping in repair, all or any part or parts of the carriageways or footways of all or any of the streets or public places in their respective parochial or other districts within the jurisdiction of this Act; and also that all and every the pavements, stones, posts, and other materials which now are or which may be hereafter placed in the foot or carriageways of any streets or public places within their respective parochial or other districts, which shall have been or may from time to time be paved or repaired by the said commissioners or trustees, or other persons having the control of the pavement in each of their respective parochial or other districts, and all things and implements which shall be then laid down, or may be purchased, provided, or made use of by them therein or thereabouts, shall be and the same are

(*a*) Secs. 93 of 18 & 19 Vict. c. 120, p. 68 *et seq.*, *ante*; and ss. 77, 78, 80, 81 of 25 & 26 Vict., c. 102, p. 304 *et seq.*, *ante*.

whom the original notice may have been given or left, the reasonable costs and charges which they shall have incurred in and about taking up the pavements and opening the ground, and shall obey, execute, and perform the said original notice of the said surveyor, and the directions of this Act relating thereto, in such and the same manner, and within such and the same time, in all respects, as if the said original notice from the said surveyor had been given to them; and they shall be liable to and shall incur the same penalties and forfeitures on neglect so to do, as they ought to have done, or would have been liable to, and would have incurred, if the said original notice had been given to them in manner before directed; and that the company by whom the pavements shall be first taken up and the ground shall be opened, who shall neglect to give the notices hereby required to the company to whom the pipe, stopcock, plug, or other thing, which shall appear to the surveyor of the pavements to require reparation, alteration, amendment, or renewal, shall appear to belong, in manner hereinbefore directed, shall for the first neglect and offence forfeit and pay the sum of 5*l.*, and for the second neglect and offence shall forfeit and shall pay the sum of 8*l.*, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of 10*l.*, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Repairs and works by companies, &c. to be executed with all convenient expedition.

XVII. And be it further enacted, that whenever after the passing of this Act any water or gaslight company, or commissioners of sewers, pursuant to the provisions hereinbefore contained, shall take up or cause to be taken up any pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or shall place in any street or public place any pipes, or other materials and things, for the purpose of executing any works beneath the surface of any street or public place, or otherwise, all and every such works shall be executed and completed within such reasonable time as the commissioners or trustees, or any other persons having the control of the pavements of the streets and public places in such parochial or other district, or any three or more of them, shall from time to time and at any time direct and appoint; and also, that all such pipes or other materials and things shall be and remain on the surface of any such street or public place, and of any streets and public places in any parochial or other district, for no longer period than shall be unavoidably necessary in the judgment of the said commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and also that the same pipes or other materials and things shall be from time to time and at all times removed

being, shall and may from time to time cause the ground of any streets or public places within their respective parochial or other districts to be raised or lowered in such manner as they or he shall think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, during the time of the paving or of the repairing the pavements of any streets or public places within their respective parochial or other districts, or of any grates, drains, or sewers therein, shall and may order the necessary materials to be placed or deposited in any such street or public place, or in any adjoining street or public place; and may stop up the way through or along any such street or public place, or any adjoining street or public place, for the purposes aforesaid, for as long time as they shall from time to time think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, shall or may from time to time direct and cause the course of any gutter or channel, running in or through any streets or public places within their respective parochial or other districts, to be turned or altered in such manner as they shall think proper, and to direct and cause the grates already placed or hereafter to be placed over any sewers (at their charges) to be removed and replaced in such manner and at such place and places as they shall think proper; and also that they or their respective surveyors, inspectors, or other officers for the time being, may (at such their charges) raise, sink, or otherwise alter, or cause or direct to be raised, sunk, or altered, any pipes or plugs, or the situation or position of any pipes or plugs of any water or gaslight companies, or any of the leaden or other pipes which may be laid into or from any of the mains or pipes of any of the said companies, when and as often and in such places as they or their respective surveyors, inspectors, or other officers for the time being shall deem expedient, for the purpose of the better paving or repairing or keeping in repair the pavement of the streets or public places within their respective parochial or other districts, but with as little detriment and inconvenience to the said companies, as in the judgment of the said surveyors, inspectors, or other officers, the circumstances will permit.

May stop up streets during reparations; and may alter the channels therein;

and may raise or lower pipes.

Pavements not to be removed without permission.

LIII. And be it further enacted, that no person or persons shall take or break up, or cause to be taken or broken up, any pavement in any street or public place in any parochial or other district within the jurisdiction of this Act, or make any alteration therein, under any pretence whatsoever, without the consent of the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or their surveyor or surveyors of the pavements for the time being, first obtained and certified under the hand or hands of their clerk or clerks, or surveyor or surveyors for

thereto, in the judgment of the commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district, or any three or more of them, shall be from time to time and at all times collected and removed and carried away, by or at the costs and charges of such company or commissioners of sewers, with all practicable expedition, and to the satisfaction of such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and that such company or commissioners of sewers shall especially so do whenever they shall be required so to do by any notice from such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three of them, or from any surveyor of the pavements appointed by them, signed by them or him, and given to such company or commissioners of sewers, or left for them at the dwelling house or place of abode of any secretary or clerk or turncock employed by such company or commissioners of sewers, or at any office or counting-house of such company, or of any clerk or secretary to any such commissioners of sewers; and that in case any such company or commissioners of sewers shall neglect to collect, carry away, and remove, or cause to be collected, carried away, and removed, from all and every such streets and public places, all such dirt, gravel, filth, rubbish, and other things whatsoever, within twenty-four hours after any such notice shall be from time to time given or left as aforesaid, to the satisfaction of such commissioners or trustees, or other persons by whom any such notice shall be signed, then the said company or commissioners of sewers shall for every such neglect and offence forfeit and shall pay the sum of 5*l.* to be recovered and applied in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered and applied by virtue of this Act.

Bars, watchmen, and other securities are to be provided during repairs of pavements, to prevent accidents(*b*).

XIX. And be it further enacted, that from time to time and at all times after the passing of this Act, all and every water or gaslight company or commissioners of sewers, who shall take up or shall cause or direct the taking up of any pavement in any street or public place in any parochial or other district within the jurisdiction of this Act, for the purpose of laying down or repairing any pipe or other thing, or any sewer or drain beneath the surface of any street or public place, or for executing any other works or otherwise, from time to time and at all times, from the commencement until the completion of all and every such works, and from the breaking up of the

(*b*) Compare 18 & 19 Vict. c. 120, s. 111, p. 78, *ante*.

occupier or occupiers of all or any messuages, houses, lands or other hereditaments to whom such drain, sewer, cesspool, gutter, or watercourse shall belong, or by whom the same shall be used or enjoyed, or from whose messuages, houses, lands, or hereditaments any such drain, sewer, gutter, or watercourse shall proceed or flow, or wherewith the same or any such cesspool shall communicate, well and sufficiently to repair, amend, alter, empty, or cleanse the same and every part thereof; and in case any such owner or owners, occupier or occupiers, within three days after any such notice shall be given or left as aforesaid, shall not well and effectually repair, amend, alter, empty, or cleanse any such drain or sewer and every part thereof, pursuant to such notice, and to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors for the time being, then it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, or for their surveyor or surveyors for the time being, to direct such drain, sewer, cesspool, gutter, or watercourse to be repaired, amended, altered, emptied, or cleansed, with such materials and in such manner as they or he may direct, and by such person or persons as they or he may from time to time appoint; and that the amount of the charges and expenses incurred thereabouts, and also of taking up, relaying, or repairing any pavements in any streets or public places which may for those purposes or any of them be taken up, shall be ascertained and determined by such surveyor or surveyors of pavements as aforesaid, and shall be certified by him or them to such owner or owners, occupier or occupiers, and shall be paid by him or them within the same time, and may be recovered, with the same penalties in case of nonpayment, in such and the same manner, and by such and the same proceedings, as are by this Act authorized and directed for the ascertaining and determining, certifying and recovering any monies to become due and to be recovered from any persons whomsoever, for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Posts may be erected for the preservation of the pavements and prevention of accidents.

LVIII. And be it further enacted, that the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, may cause posts of wood, stone, or iron, to be set up near or adjoining the foot pavements, in such part or parts of all or any of the streets or public places within their respective parochial or other districts, as they shall judge necessary; and also shall and may set up posts and rails near or adjoining to any vacant

ground, or other exposed or dangerous place, abutting upo
or adjoining to any of the streets or public places in suc
parochial or other district, in case they shall think proper s
to do, for preventing accidents or casualties; and if any per
son or persons shall wilfully or carelessly knock down, breal
damage, or injure such posts or rails, or any of them, ever
person so offending shall for every such offence forfeit and pa
any sum not being less than 40*s.* nor exceeding 10*l.*; an
shall also make a full satisfaction (to be ascertained by th
justice before whom such offender or offenders shall be con
victed) to such commissioners, trustees, or other person o
persons having the control of the pavements in the parochia
or other district within which the offence shall be committed
for the damage so done; and that such penalty and satisfac
tion shall be recovered in the same manner in which penaltie
and forfeitures are hereinafter directed to be recovered b
virtue of this Act.

LIX. And be it further enacted, that it shall be lawful fo
the commissioners, trustees, or any other persons having th
control of the pavements in the streets or public places in an
parochial or other district within the jurisdiction of this Ac
and who by any local Act or Acts of parliament relating there
are also authorized and empowered to direct the cleansing
the streets or public places within such parochial or oth
district, at any time or times hereafter to agree by priv
contract or by public auction, or by tender or proposal if th
shall think fit, for any time not exceeding three years, wi
any person or persons to be the scavenger or scavengers, rak
or rakers, cleanser or cleansers of the streets and public pla
within the said parochial or other district; and such per
or persons, on a certain day in every week, and oftener wh
thereunto required by any three or more of the said comm
sioners or trustees, or other persons as aforesaid, or by
surveyor of the pavements of such parochial or other dist
or any inspector or other officer or person appointed by s
or any of them, shall bring or cause to be brought conve
carriages into all such streets or public places where such
riages can be drawn near or pass unto, and at or before
approach, by bell, horn, clapper, or otherwise by a loud
or cry, shall give notice to the inhabitants, and shall
like notice in every other place into which the said
cannot pass and abide, and such scavengers, rakers
shall take and carry away, or cause to be taken
away, from the respective houses and
tants or occupiers, their soil, ashes,

(a) Compare sect. 126 of

Works neglected by companies, &c. may be executed by surveyors of pavements.

XXII. And be it further enacted, that in case any water or gaslight company, or commissioners of sewers, at any time or times after the passing of this Act, shall neglect to take up the pavement in any street or public place in any parochial or other district within the jurisdiction of this Act; or to open any ground beneath the surface of such street or public place; or substantially to repair, alter, or amend, or renew any pipe, plug, stopcock, or other thing, or any public sewer, as the case may be; or to give the notices required by this Act to any other company, or to any paviors, surveyors of pavements, or other persons; or to remove or take away any pipes, or other materials or things from any street or public place; or to collect and carry away or remove all dirt, gravel, filth, rubbish, and other things, from any street or public place; or to place and continue posts, rails, bars, or ropes, lanthorns and watchmen, in any street or public place; or to do and execute all and every such works and things, and all or any other works and things directed and required by this Act to be done and executed by any such company or commissioners of sewers, and pursuant to any notice given or left as herein directed by any commissioners or trustees, or other persons having the control of the pavements in the streets or public places within any parochial or other district within the jurisdiction of this Act, or by the surveyors of pavements, or other officers or persons appointed by them or otherwise, and to their respective satisfaction, and within the several times and periods specified and directed by this Act; then and in every or any of such cases, and at all times afterwards, it shall and may be lawful to and for any surveyor of the pavement of the parochial or other district wherein the street or public place shall be situate as to which any such neglect shall occur, and all and every such surveyors are hereby empowered and required, forthwith to cause all and every such several works, matters, and things, which shall not be executed and performed by every such company or commissioners of sewers, or which shall not be well, substantially, and effectually executed and performed to his or their satisfaction, or to the satisfaction of the commissioners or trustees, or other persons by whom he or they shall be appointed, within the times and periods limited by this Act to be well and effectually performed, to his or their satisfaction, or to the satisfaction of such commissioners or trustees, or other persons as aforesaid, as herein provided, at the costs and charges of such company or commissioners of sewers who shall have so neglected well, substantially, and effectually to perform and execute the same, and every of them, and every part thereof; and that such costs and charges and every of them shall be reimbursed and paid by any and every such company or commissioners of sewers to such surveyor or surveyors of pavements, or to the

person or persons employed by him or them to perform and execute any or every of such works, or to the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district within which such works shall be performed and executed, or to their treasurer, or to such other person or persons as such commissioners or trustees or other persons shall from time to time appoint to receive the same; and that the amount of such costs and charges, and of the monies so to be paid, being directed by the said commissioners or trustees or other persons, shall be ascertained and notified, and certified and recovered (over and above all and every the penalties and forfeitures which may be incurred for any such neglect by virtue of this Act) in the same manner in which any costs and charges which may be incurred, and any monies which may become due, for and about and in respect of the relaying or repairing of any pavements hereafter broken or taken up in any streets or public places by or by the direction or on account of any company, commissioners of sewers, or other persons, are to be ascertained and notified and certified, and may be recovered by virtue of this Act.

Pavements taken up by companies, &c. to be relaid by commissioners of pavements (*a*);

XXIII. And be it further enacted, that when and as often as any pavement of any streets or public places in any parochial or other district within the jurisdiction of this Act shall be broken or taken up by any water or gaslight company, or by any commissioners of sewers, or by any person or persons acting by or under their respective orders or authorities, or by any other person or persons by the directions of this Act, or by and with or without the consent of the commissioners or trustees or other persons having the control of the pavements in any parochial or other district wherein any street or public place shall be situate, the pavements whereof or any part whereof shall be broken or taken up, then all such part and parts of the pavements of any such street or public place which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto, as far as may be rendered necessary in the judgment of a surveyor of pavements to such commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, and after the ground opened shall be refilled and rammed down pursuant to the directions of this Act, shall be with all convenient speed completely and substantially repaved, with all necessary stones, ballast, gravel, and other materials, and shall be kept in complete repair, by the pavior or mason then contracting with or employed by

(*a*) Compare sect. 110 of 18 & 19 Vict. c. 120, p. 77, *ante*, and 25 & 26 Vict. c. 102, s. 82, p. 309, *ante*.

such commissioners or trustees or other persons, or by such person or persons as they may from time to time appoint for that purpose, under the inspection and direction and to the satisfaction of the said surveyor of pavements to the said commissioners or trustees or other persons, for the periods following; (that is to say,) all such part or parts of the pavements of any such street or public place, which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of making and laying down any main or mains of pipes, or of substituting iron for wooden pipes, or of making any sewer, vault, or drain, for twelve calendar months next ensuing the breaking and taking up of the same pavements; and all such part or parts of the pavements of any such street or public place, which from time to time and at all times shall be so broken or taken up as aforesaid, and the pavement contiguous thereto as aforesaid, which shall be so broken or taken up for the purpose of altering the position of or of repairing any pipes, stopcocks, or plugs, or of repairing, cleansing, or altering any sewer, vault, or drain, for three calendar months next ensuing the breaking and taking up the same pavements; and that the costs, charges, and expenses of taking out any ground, and filling in hard rubbish or other good materials, and of repairing and keeping in necessary repair for the periods aforesaid all or any such pavement in manner aforesaid, and all the expenses of cartage, and all other charges and expenses attending the same, as well as all costs and charges which may be incurred pursuant to the directions of this Act by any surveyor of pavements in and about executing and performing any works or matters neglected to be executed and performed by any company or commissioners of sewers, as hereinbefore directed, shall be ascertained and fixed from time to time by the surveyor of pavements to such commissioners or trustees or other persons within whose parochial or other districts such works or other matters shall have been performed and executed, or such pavements shall have been broken up and repaved; and such costs and charges from time to time, whenever directed by the said commissioners or trustees or other persons, shall be certified by their clerk or clerks, surveyor or surveyors of pavements, or one of them, or some other officer or servant appointed by them, by a note to be given to the said company or commissioners of sewers, or other persons who shall have neglected to perform or execute such works, or by whom or by whose orders or authorities or on whose account such pavement shall have been broken or taken up, or to be left for such company, commissioners of sewers, or other person or persons, at their dwelling house or dwelling houses, or place or places of abode, or at any office or counting-house of any

such company or commissioners of sewers, or at the dwelling house or place of abode of any secretary, clerk, or turncock employed by such company, or of any clerk or secretary to any such commissioners of sewers; and that the full amount of the costs and charges so certified shall be paid within two months after the same note shall be given or left as aforesaid, by such company or commissioners of sewers, or other person or persons to or for whom the same note shall have been given or left as aforesaid, to the surveyor of pavements, or to the treasurer to such commissioners or trustees, or other persons having the control of the pavements as aforesaid, or to the mason or pavior or other person or persons by whom any such works or matters shall have been done and performed, or to such other person or persons as the said commissioners or trustees or other persons, by the said note of their clerk or clerks, surveyor or surveyors, or other officer or servant, shall direct and appoint to receive the same, or any part thereof; and the receipt or receipts of the person or persons so appointed to receive the same shall be a good and effectual discharge or discharges for any and every such payment, and for all and every the monies in any such receipt or receipts expressed and acknowledged to have been received; and also that in case at any time or times the full amount of such costs and charges, so certified as aforesaid, shall not be so fully paid without any deduction or abatement whatsoever, within two months after such note as aforesaid shall have been given or left aforesaid, and although no other demand shall be made of any such amount or costs and charges, or any part thereof, then from time to time and at all times afterwards it shall and may be lawful for the said commissioners or trustees, or other persons having the control of the pavements as aforesaid, to recover double the amount of such costs and charges so certified and being unpaid, of and from the company or commissioners of sewers, or other person or persons to or for whom such note shall have been given or left as aforesaid, either by distress and sale of the goods and chattels of such company or commissioners of sewers or other person or persons, by a warrant under the hand and seal of any justice of the peace for the city, borough, or county wherein such parochial or other district shall be situate, and which warrant every such justice is hereby empowered and required to grant, upon proof of the service of such note as aforesaid, and of the nonpayment of the costs and charges thereby certified, by the oath or affirmation of the person who shall have left any such note as directed by this Act, and by the oath or affirmation of the person or persons appointed by such note to receive such costs and charges of the nonpayment thereof, and every part thereof, to him or them, and which oath or affirmation any and every such justice of the peace is hereby empowered and required

and the charges repaid to them by such companies.

to administer, or to recover the same and every part thereof in any court or courts of requests or county court, or by any action or actions in any court of law; and that in any such proceedings in any court or courts of requests or county court, or in any such action or actions, it shall be only necessary for the said commissioners or trustees or other persons, or the complainant or complainants, plaintiff or plaintiffs, in any such proceedings or actions, to prove the service of such note pursuant to the directions of this Act, to entitle him or them to recover by such proceedings, or by such action or actions, from the said company or commissioners of sewers or other person or persons, double the full amount of such costs and charges so certified by such note, unless the said company or commissioners of sewers or other person or persons shall prove, upon the return of the summons in such proceedings in any court or courts of requests or county court, or on the trial of such action or actions, the actual payment of the full amount of the costs and charges so certified, within two months after the said note was left as aforesaid, to the person or persons thereby appointed to receive the same, and that in any and every such action or actions no essoign, protection, or wager of law, or plea in abatement, or any dilatory plea, or more than one imparlance, shall be allowed.

Commissioners, &c., may pave streets within their districts, paving materials being vested in them (*a*);

LII. And be it further enacted, that it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, from time to time to pave and keep in repair, or cause to be paved and kept in repair, or to enter into any contract or contracts for paving and keeping in repair, all or any part or parts of the carriageways or footways of all or any of the streets or public places in their respective parochial or other districts within the jurisdiction of this Act; and also that all and every the pavements, stones, posts, and other materials which now are or which may be hereafter placed in the foot or carriageways of any streets or public places within their respective parochial or other districts, which shall have been or may from time to time be paved or repaired by the said commissioners or trustees, or other persons having the control of the pavement in each of their respective parochial or other districts, and all things and implements which shall be then laid down, or may be purchased, provided, or made use of by them therein or thereabouts, shall be and the same are

(*a*) See s. 98 of 18 & 19 Vict. c. 120, p. 68 *et seq.*, *ante*; and ss. 77, 78, 80, 81 of 25 & 26 Vict., c. 102, p. 304 *et seq.*, *ante*.

hereby vested in the respective commissioners or trustees, or other persons having the control of the pavements of the streets and public places within each of their respective parochial or other districts, and shall and may be laid and stated as their property according to the general name or title by which they are distinguished in the respective local Act or Acts of parliament relating to their respective parochial or other districts, under and by virtue whereof they are or shall be from time to time appointed to act, and not according to their individual name or names, in any indictment, information, or other proceeding which may be preferred or filed, or taken against any person or persons for removing or taking away, stealing, detaining, spoiling, injuring, or destroying the same pavements or materials, or implements or things, or any of them, or any part or parts thereof; and also that it shall and may be lawful for them from time to time to order all or any of the stones and other materials then being in any such streets or public places as they may from time to time pave or repair, to be made use of in or towards the paving or repairing the foot or carriageway pavements in any streets or public places within their respective parochial or other districts; and also may from time to time purchase, or rent upon lease or otherwise, any premises which they may think necessary, for the purpose of laying or depositing or otherwise disposing of all or any of their stones or other materials or implements, for and until such time as they shall use the same; and also that they may from time to time sell and dispose of all or any part of the old pavements or other materials or implements possessed by or belonging to them, to such person or persons as shall be willing to purchase the same, they applying the monies arising from time to time by any and every such sales in aid of the monies raised and to be raised within their respective parochial or other districts for or towards the expense of paving and repairing the pavements therein; and also shall and may cause to be dug, carted, and carried out of or brought into any streets or public places within their respective parochial or other districts, and shall and may purchase any such gravel, stones, and other materials, horses, carts, and tools, and employ such artificers, workmen, labourers, carters, and other persons, and issue such money on those accounts, and do all and every such other acts and things as the said commissioners or trustees, or other persons having the control of the pavements as aforesaid, may from time to time judge necessary or expedient for or towards or about the paving or repairing the pavements of any streets or public places within their respective parochial or other districts, or incidental thereto; and also that they or their respective surveyor or surveyors of the pavements, or any inspectors or other officers by them appointed for the time

and to be disposed of by them;

and that necessary materials may be purchased, and workmen employed.

being, shall and may from time to time cause the ground of any streets or public places within their respective parochial or other districts to be raised or lowered in such manner as they or he shall think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, during the time of the paving or of the repairing the pavements of any streets or public places within their respective parochial or other districts, or of any grates, drains, or sewers therein, shall and may order the necessary materials to be placed or deposited in any such street or public place, or in any adjoining street or public place; and may stop up the way through or along any such street or public place, or any adjoining street or public place, for the purposes aforesaid, for as long time as they shall from time to time think necessary; and also that they or their respective surveyors, inspectors, or other officers for the time being, shall or may from time to time direct and cause the course of any gutter or channel, running in or through any streets or public places within their respective parochial or other districts, to be turned or altered in such manner as they shall think proper, and to direct and cause the grates already placed or hereafter to be placed over any sewers (at their charges) to be removed and replaced in such manner and at such place and places as they shall think proper; and also that they or their respective surveyors, inspectors, or other officers for the time being, may (at such their charges) raise, sink, or otherwise alter, or cause or direct to be raised, sunk, or altered, any pipes or plugs, or the situation or position of any pipes or plugs of any water or gaslight companies, or any of the leaden or other pipes which may be laid into or from any of the mains or pipes of any of the said companies, when and as often and in such places as they or their respective surveyors, inspectors, or other officers for the time being shall deem expedient, for the purpose of the better paving or repairing or keeping in repair the pavement of the streets or public places within their respective parochial or other districts, but with as little detriment and inconvenience to the said companies, as in the judgment of the said surveyors, inspectors, or other officers, the circumstances will permit.

May stop up streets during reparations; and may alter the channels therein;

and may raise or lower pipes.

Pavements not to be removed without permission.

LIII. And be it further enacted, that no person or persons shall take or break up, or cause to be taken or broken up, any pavement in any street or public place in any parochial or other district within the jurisdiction of this Act, or make any alteration therein, under any pretence whatsoever, without the consent of the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or their surveyor or surveyors of the pavements for the time being, first obtained and certified under the hand or hands of their clerk or clerks, or surveyor or surveyors for

the time being; and that all and every person and persons to whom such consent shall be granted, shall be subject and liable to all the provisions in this Act contained in respect to the water and gaslight companies and the commissioners of sewers, as to the reparation of the pavements, and as to the removal of all rubbish and other obstructions, and as to the provision of bars, watchmen, and other securities, and to all penalties by this Act imposed on the breach of any of such provisions respectively, and to such other conditions and regulations as the said commissioners or trustees, or other persons consenting as aforesaid, shall stipulate and direct, and shall obey and perform the same and every of them (*b*); and that in case any person or persons (except water and gaslight companies and the commissioners of sewers, and who are to conform to the particular provisions of this Act relating to them,) shall take or break up, or cause to be taken or broken up, or shall wilfully damage any pavement in any streets or public places, or shall make or cause to be made any alteration therein, without such consent as aforesaid, certified as aforesaid, then any and every such person or persons in every such case so offending, shall for each and every such offence forfeit and pay a sum not being less than 5*l.* nor exceeding 10*l.*; and also for each and every square foot of such pavement exceeding one foot so taken or broken up or altered, or so wilfully damaged, shall forfeit and pay any sum not being less than 5*l.* nor exceeding 10*l.*, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Private drains also to be cleansed.

LVII. And be it further enacted, that whenever from time to time or at any time hereafter it shall appear to the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, or to any two or more of them, or to their surveyor or surveyors for the time being, or any of them, that any private drain, sewer, cesspool, gutter, or watercourse, running beneath or above or communicating with any other drain or sewer beneath any of the pavements of any of the streets or public places in any such parochial or other district, doth require to be repaired, amended, altered, emptied, or cleansed, it shall and may be lawful to and for the said commissioners or trustees, or other persons having the control of such pavements as aforesaid, or any two or more of them, or their surveyor or surveyors as aforesaid for the time being, or any of them, to give or cause to be given a notice or notices under their hands, or under the hand or hands of such surveyor or surveyors of pavements for the time being, to or for the owner or owners or for the

(*b*) See sect. 100 of 18 & 19 Vict. c. 120, p. 76, *ante*.

occupier or occupiers of all or any messuages, houses, lands or other hereditaments to whom such drain, sewer, cesspool, gutter, or watercourse shall belong, or by whom the same shall be used or enjoyed, or from whose messuages, houses, lands, or hereditaments any such drain, sewer, gutter, or watercourse shall proceed or flow, or wherewith the same or any such cesspool shall communicate, well and sufficiently to repair, amend, alter, empty, or cleanse the same and every part thereof; and in case any such owner or owners, occupier or occupiers, within three days after any such notice shall be given or left as aforesaid, shall not well and effectually repair, amend, alter, empty, or cleanse any such drain or sewer and every part thereof, pursuant to such notice, and to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors for the time being, then it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, or for their surveyor or surveyors for the time being, to direct such drain, sewer, cesspool, gutter, or watercourse to be repaired, amended, altered, emptied, or cleansed, with such materials and in such manner as they or he may direct, and by such person or persons as they or he may from time to time appoint; and that the amount of the charges and expenses incurred thereabouts, and also of taking up, relaying, or repairing any pavements in any streets or public places which may for those purposes or any of them be taken up, shall be ascertained and determined by such surveyor or surveyors of pavements as aforesaid, and shall be certified by him or them to such owner or owners, occupier or occupiers, and shall be paid by him or them within the same time, and may be recovered, with the same penalties in case of nonpayment, in such and the same manner, and by such and the same proceedings, as are by this Act authorized and directed for the ascertaining and determining, certifying and recovering any monies to become due and to be recovered from any persons whomsoever, for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Posts may be erected for the preservation of the pavements and prevention of accidents.

LVIII. And be it further enacted, that the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, may cause posts of wood, stone, or iron, to be set up near or adjoining the foot pavements, in such part or parts of all or any of the streets or public places within their respective parochial or other districts, as they shall judge necessary; and also shall and may set up posts and rails near or adjoining to any vacant

ground, or other exposed or dangerous place, abutting upon or adjoining to any of the streets or public places in such parochial or other district, in case they shall think proper so to do, for preventing accidents or casualties; and if any person or persons shall wilfully or carelessly knock down, break, damage, or injure such posts or rails, or any of them, every person so offending shall for every such offence forfeit and pay any sum not being less than 40*s.* nor exceeding 10*l.*; and shall also make a full satisfaction (to be ascertained by the justice before whom such offender or offenders shall be convicted) to such commissioners, trustees, or other person or persons having the control of the pavements in the parochial or other district within which the offence shall be committed, for the damage so done; and that such penalty and satisfaction shall be recovered in the same manner in which penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Commissioners, &c. may appoint scavengers (*a*).

LIX. And be it further enacted, that it shall be lawful for the commissioners, trustees, or any other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act, and who by any local Act or Acts of parliament relating thereto are also authorized and empowered to direct the cleansing of the streets or public places within such parochial or other district, at any time or times hereafter to agree by private contract or by public auction, or by tender or proposal if they shall think fit, for any time not exceeding three years, with any person or persons to be the scavenger or scavengers, raker or rakers, cleanser or cleansers of the streets and public places within the said parochial or other district; and such person or persons, on a certain day in every week, and oftener when thereunto required by any three or more of the said commissioners or trustees, or other persons as aforesaid, or by the surveyor of the pavements of such parochial or other district, or any inspector or other officer or person appointed by them or any of them, shall bring or cause to be brought convenient carriages into all such streets or public places where such carriages can be drawn near or pass unto, and at or before their approach, by bell, horn, clapper, or otherwise by a loud noise or cry, shall give notice to the inhabitants, and shall give the like notice in every other place into which the said carriages cannot pass and abide, and such scavengers, rakers, or cleansers shall take and carry away, or cause to be taken and carried away, from the respective houses and premises of the inhabitants or occupiers, their soil, ashes, cinders, rubbish, dust,

(*a*) Compare sect. 125 of 18 & 19 Vict. c. 120, p. 87, *ante*.

dirt, and filth, and all which the said scavengers, rakers, or cleansers shall carry away, or cause to be carried away, at their own costs and charges, upon pain of forfeiting a sum of 40*s.* for every neglect or default (except nevertheless all such rubbish, earth, dust, and filth as shall be occasioned by building, repairing, amending, or altering any house or houses, or any other building or buildings, or by cleansing or repairing any drain or sewer); and also that the said rubbish, earth, dust, or soil thereby occasioned, and every part thereof, within the space of twelve hours after the same or any part thereof shall be first left or placed in any street or public place, shall be carried away by or at the charge of the owner or owners, occupier or occupiers of such houses and buildings, or by the commissioners of such sewers respectively as aforesaid; and that such owners or occupiers or commissioners neglecting to remove the same, and every part thereof, or to cause the same to be removed within the time above limited, shall forfeit and pay the sum of 5*l.* for every neglect to remove the same within the time above limited; and also that if any person or persons shall refuse to permit such other soil, ashes, cinders, rubbish, dust, dirt, or filth to be taken away by the scavengers, rakers, or cleansers, or other persons appointed by and agreeing with the said commissioners or trustees, or other persons as aforesaid, then every such person or persons so offending shall in like manner forfeit and shall pay the like sum of 5*l.*: Provided always, that it shall and may be lawful to and for the said commissioners, trustees, or other persons having the control as aforesaid, either to contract and agree with and to appoint the same person or persons, or a different person and other persons, to be the scavengers, rakers, or cleansers, within their parochial or other district, of the streets or public places therein, and to be the persons to collect and carry away and possess and retain the soil, ashes, cinders, rubbish, dust, dirt, and filth from the houses and premises within their respective parochial or other districts, as they shall deem most expedient; but that the right and benefit of such soil, ashes, cinders, rubbish, dust, dirt, and filth shall belong exclusively to the person or persons who shall be from time to time by the said commissioners or trustees, or other persons as aforesaid, appointed to collect and possess the same; anything in any local Act or Acts of parliament or in this Act to the contrary notwithstanding.

Dust to be removed only by scavengers so appointed.

LX. And be it further enacted, that if any person or persons, other than the scavengers, rakers, or cleansers of any parochial or other district, or the other person or persons employed or appointed by or contracting with the said commissioners or trustees, or other persons as aforesaid, to collect and retain the dust, cinders, or ashes within their respective

parochial or other district, or those employed by and under such person or persons, shall on any pretence whatsoever go about to collect or gather, or shall ask for, receive, or carry away any dust, cinders, or ashes (*a*), it shall and may be lawful for any justice of the peace for the city, borough, or county within which such parochial or other district may be situate, upon complaint to him made, to grant a warrant to bring before him such offender or offenders, and also for any person or persons who shall see any such offence committed to seize, and also for any other person or persons to assist in seizing, the offender or offenders, together with the horses, asses, cattle, carts, trucks, wheelbarrows, or other carriages or implements made use of for carrying the same away; and by the authority of this Act, and without any other warrant, to convey him, her, or them before such justice of the peace, or any justice of the peace for the said city, borough, or county; and such justice shall and he is hereby authorized and required to examine upon oath the person or persons apprehending such offender or offenders, and any witness or witnesses who shall appear to give information or evidence touching such offence; and if the party or parties shall be convicted of going about to collect or gather, or of asking for, receiving, or carrying away any dust, cinders, or ashes from any house or other premises within any parochial or other district within the jurisdiction of this Act, not being the person or persons employed or appointed by or contracting with the said commissioners or trustees, or other persons having the control of the pavements within such parochial or other district, to collect and possess the dust, cinders, and ashes from the houses and premises therein, or not acting with or under his or their authority, he, she, or they shall respectively, for the first offence, forfeit and pay the sum of 10*l.*; for the second offence, the sum of 15*l.*; and for the third and every other subsequent offence, the sum of 20*l.*; and one moiety of which respective penalties shall be paid to the informer or informers, or to the person or persons who shall apprehend the offender or offenders, and the other moiety shall be paid and shall belong to the person or persons so employed or appointed by or contracting with the said commissioners or trustees, or other persons as aforesaid; and if such offender or offenders shall not on conviction pay the said penalty or penalties, such justice is hereby required to direct such horses, asses, cattle, carts, trucks, wheelbarrows, or other carriages or implements which shall have been so seized, to be appraised and sold; and after deducting out of the monies to arise by

(*a*) Ashes from a brass-founder's furnace containing particles of metal not "dust, cinders, or ashes," within this section. *Law* v. *Dodd*, 17 L. J. (N.S.) M. C. 65.

such sale the penalty or penalties incurred, together with the reasonable charges and expenses of such warrant, and of such distress, appraisement, and sale, the overplus thereof shall be returned upon demand to the party or parties whose horses or other things shall be appraised and sold; and in case there shall have been no such seizure as aforesaid, or if the horses, asses, cattle, carts, or other things which shall be appraised and sold, shall not produce a sufficient sum of money to pay the said penalty or penalties, charges, and expenses, then if such offender or offenders shall not upon the conviction pay the said penalty or penalties, or such part or parts of the said penalty or penalties, charges, and expenses, which shall remain over and above the produce of the horses, asses, cattle, carts, and other things so seized and sold, then such justice is hereby required to commit such offender or offenders to the common gaol or house of correction for the city, borough, or county where such parochial or other district shall be situate, there to be kept to hard labour for any time not exceeding thirty days, unless such penalty or penalties, and charges and expenses, and every part thereof, shall be sooner paid and satisfied.

On the neglect of scavengers to remove dust for seven days, the dust may be removed by any other person.

LXI. And be it further enacted, that in case such person or persons so employed or appointed by or contracting with the said commissioners or trustees or other persons for the purposes aforesaid, shall neglect for the space of seven days to bring or cause to be brought carts or proper carriages into all the streets or public places as aforesaid where such carriages can pass, and to give notice in manner aforesaid to the inhabitants of their coming, for the purpose of taking away such dust, dirt, soil, rubbish, filth, cinders, and ashes, and to give the like notice in every place into which the said carts and carriages cannot pass, or to take away and remove all such dust, dirt, soil, rubbish, filth, or cinders, or ashes from the houses and premises of all and every the inhabitants of such streets or public places, or from such part or parts of such houses or premises where such dust, dirt, soil, rubbish, filth, cinders, and ashes shall be deposited, that then (after twenty-four hours' notice given to such person or persons so employed or appointed by or contracting with the said commissioners or trustees or other persons for the purposes aforesaid, or left for him or them at his or their usual house or houses, yard, or other premises, requiring him or them to bring or cause to be brought carts or carriages to take away their dust, dirt, filth, cinders, or ashes, and to take away and remove the same from their respective houses and premises,) it shall and may be lawful for such of the inhabitants of such of the said streets or public places, who shall have given such notice as aforesaid, to give away or to sell their dust, dirt, filth, cinders, or ashes to any person or persons whomsoever; and that such person

or persons who shall take and carry away the said dust, dirt, filth, cinders, or ashes, shall not be subject or liable to any penalty or penalties for so doing upon every such neglect; any thing in this Act or in any local Act or Acts of parliament contained to the contrary thereof notwithstanding.

Dirt not to be swept into any common sewer.

LXII. And be it further enacted, that no scavenger, raker, or cleanser, or any other person, shall sweep, rake, or place any of the slop, mud, dirt, dust, rubbish, ashes, filth, or soil found or being in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any other slop, mud, dirt, dust, rubbish, ashes, filth, soil, or other articles or things, over any grate or grates placed above or communicating with any common or public drain or sewer, or into any common or public drain or sewer; and that any and every scavenger, raker, or cleanser, or any other person or persons who shall so offend, shall for every such offence forfeit and shall pay the sum of 5*l.*, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Footways to be swept daily during frost and snow (*a*).

LXIII. And be it further enacted, that every occupier of any house, tenement, warehouse, shop, shed, coach-house, stable, chapel, meeting house, or other public or private building in any street or public place in any parochial or other district within the jurisdiction of this Act, during the continuance of frost, or after or during the fall of snow, from time to time, and at all times hereafter, shall once in every day before the hour of ten of the clock in the forenoon of each day, except Sunday, sweep and cleanse, or cause to be swept and cleansed, the footway all along the front side or back walls of their respective houses, tenements, warehouses, shops, sheds, coach-houses, stables, chapels, meeting houses, or other public or private building; and that every occupier who shall neglect so to do shall for every such offence forfeit and pay any sum not exceeding the sum of 10*s.*, to be levied and recovered and applied in such and the same manner in which other penalties are by this Act hereinafter directed to be recovered and applied; and also that the owner or owners of any house or other tenement within the jurisdiction of this Act, which may be let furnished, or in divided apartments, shall be deemed and taken, for the purpose of this provision, to be the occupier or occupiers of every such house or other tenement respectively.

Nuisances and annoyances from beating car-

LXIV. And be it further enacted, that if any person or persons shall, in any street or public place in any parochial or other district within the jurisdiction of this Act, at any time or

(*a*) See 2 & 3 Vict. c. 47, s. 60, for further improving the police in and near the metropolis.

pets, breaking horses, driving barrows and carriages on pavements, and throwing filth, prohibited.

times hereafter, beat or dust any carpet or carpets; or shall drive any carriage or carriages, for the purpose of breaking, exercising, or trying horses; or shall ride any horse, mare, or gelding, for the purpose of exercising, airing, trying, showing, or exposing such horse, mare, or gelding for sale (otherwise than by passing through such streets or other public places); or shall throw, cast, or lay, or shall cause, permit, or suffer to be thrown, cast, or laid, or to remain, any ashes, dust, dirt, rubbish, offal, dung, soil, blood, or other filth or annoyance, or any matter or thing, in or upon the carriageway or footway pavement of any such street or other public place in any parochial or other district within the jurisdiction of this Act; or shall kill, slaughter, scald, dress, or cut up any beast, swine, calf, sheep, lamb, or other cattle, in or so near to any of the said streets or other public places, so that any blood or filth shall run or flow upon or over, or be on any or either of such pavements; or shall run, roll, drive, draw, or place, or cause, permit, or suffer to be run, rolled, driven, drawn, or placed, upon any of the said footway pavements of any street or public place in any parochial or other district within the jurisdiction of this Act, any waggon, cart, dray, sledge, or other carriage, or any wheel, wheelbarrow, handbarrow, or truck, or any hogshead, cart, or barrel; or shall wilfully ride, lead, or drive any horse, ass, mule, or other beast, upon any of the footway pavements aforesaid, then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate, and he is hereby required, upon complaint to him made upon oath or affirmation of one or more credible witness or witnesses, to issue a summons requiring such offender or offenders to appear before him, at such time and place as shall be in such summons specified; or it shall and may be lawful to and for any person or persons whomsoever, who shall see any such offence committed, if he or they shall think proper, to seize, and also for any other person or persons to assist in seizing, such offender or offenders by the authority of this Act, and by such authority, and without any other authority or warrant whatsoever, to convey such offender or offenders before some justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, or being brought before such justice when so seized or otherwise, he the said justice shall proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence; and if the party or parties accused shall be convicted of any or either of the offences as aforesaid upon his or their own confession, or upon the oath or affirmation of one or more credible

witness or witnesses as aforesaid, then and in every such case the person or persons so convicted shall forfeit and pay a sum not less than 40*s.* nor exceeding 5*l.* for each and every offence; and that one moiety of every such penalty shall be paid to the informer or informers, or to the person or persons who shall apprehend such offender or offenders; and the other moiety thereof shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offence or offences shall have been committed.

Annoyances from stalls, baskets, and wares and other matters prohibited, and punishable on renewal after notice; and all such articles may be seized and sold (*a*).

LXV. And be it further enacted, that if any person or persons at any time or times hereafter shall set or place, or cause or permit to be set or placed by any servant or person employed by him, her, or them, or otherwise, any stall board, chopping block, show board on hinges or otherwise, basket, wares, merchandise, casks, or goods of any kind whatsoever; or shall hoop, place, wash, or cleanse, or cause to be hooped, washed, or cleansed, any pipe, barrel, cask, or vessel, in or upon or over any part of the carriage or footways in any streets or public places in any parochial or other district within the jurisdiction of this Act; or shall set out, lay, or place, or cause or procure, permit or suffer to be set out, laid, or placed, any coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage upon any of the said carriage-ways (except such coaches, chariots, and chairs as have been or shall be hereafter licensed by the commissioners for regulating and licensing hackney coaches, chariots, and chairs, and which stand for hire according to the statutes and byelaws made for those purposes), and also except for the necessary time of loading or unloading any cart, wain, waggon, dray, sledge, truck, or other carriage, or taking up or setting down any fare, or waiting for passengers when actually hired, or harnessing or unharnessing the horses from any coach, cart, wain, waggon, dray, sledge, truck, or other carriage; or if any person or persons shall set or place, or cause to be set or placed, in or upon or over any of the said carriage or footways, any timber, stones, bricks, lime, or other materials or things for building whatsoever (unless the same shall be inclosed as in and by any local Act or Acts of parliament, or by this Act, or some of them, may be directed), or any other matters or things whatsoever; or shall hang out or expose, or cause or permit to be hung out or exposed, any meat or offal, or other matter or thing whatsoever, from any house or houses, or other buildings or premises belonging to or occupied by him, her, or

(*a*) See 2 & 3 Vict. c. 47, s. 60.

them, over any part of either of such pavements, or over any area or areas of any houses or other buildings or premises, or shall place or put out, or cause or permit to be placed or put out, any garden or other pots (except the same shall be perfectly secured from falling, to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in any such parochial or other district, or of the surveyor of the pavements for the time being), or any other matter or thing, from and on the outside of the front or any other part of any house or houses, or other buildings or premises, over or next unto any such street or public place; and shall not immediately remove all or any such matters or things, being thereunto required by any surveyor or surveyors of pavements, or by any other person or persons employed or appointed by the commissioners, trustees, or other persons having the control of the pavements in any parochial or other district; and whether the same shall have been so set or placed, exposed or put out by himself, herself, or themselves personally, or by any of his, her, or their servants, or by any person or persons employed by him, her, or them, and shall not continue and keep the same so removed; or if any person or persons, having in pursuance of any such requisition or requisitions as aforesaid, removed or caused to be removed any such stall board, show board, chopping block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, carriage, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things, shall at any time thereafter again set, lay, or place, expose or put out, or cause, procure, permit or suffer to be again set, laid, or placed, exposed or put out, the same or any of them, or any other stall board, show board, chopping block, basket, wares, merchandise, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things whatsoever (save and except as aforesaid), in or upon or over any of the carriage or footways of or next unto any streets or public places within the same parochial or other district as aforesaid; then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein the said parochial or other district may be situate, and he is hereby required, upon complaint to him made by any one or more credible witness or witnesses upon oath, to issue a summons requiring the person or persons accused of such offence, or the owner or owners of the goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall be so set or placed, exposed or set out, or the master or masters of the person or persons, by whose servants, or by the person or

persons employed by whom, such offence shall have been committed, to appear before him, or before any other justice of the peace for the same city, borough, or county, as shall be then or there present, at such time or place as shall be in such summons specified, and then and there to proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence; and if the person or persons so offending shall be convicted of any or either of the offences aforesaid, upon his, her, or their own confession, or upon the oath or affirmation of one or more credible witness or witnesses as aforesaid, he, she, or they who shall be so convicted, and the owner or owners of such goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages which shall be so set or placed, exposed or set out as aforesaid, and the master or masters, employer or employers of the person or persons so offending, shall forfeit and pay for the first offence the sum of 40*s.* and for the second and every subsequent offence any sum not exceeding 5*l.*; and that such respective penalties shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offence shall have been committed, or to such other person or persons as they shall direct and appoint; and also, that not only shall such penalties become payable and to be recovered, but that it shall and may be lawful to and for any person or persons appointed or to be appointed by the said commissioners or trustees or other persons as aforesaid for that purpose, without any warrant or other authority than this Act, to seize any such stall board, show board, chopping block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, together with the horse or horses, ass or asses, mule or mules, if any shall be thereunto belonging, with the harness, gear, and accoutrements thereof, or any such timber or other materials, or other matters or things aforesaid, or any of them; and in case any of the wares, goods, and merchandises so seized shall be perishable, or shall be articles of food, then the same shall be immediately forfeited, and such person or persons who shall seize the same shall deliver the same or cause the same to be delivered to the churchwardens or overseers of the poor, or to some of them, or to the master of any workhouse situate in the said parochial or other district, or of the parish whereunto such district shall belong; and the same shall and may be given and distributed by him or them unto one or among any one or more of the poor inhabitants of the said parochial or other district, or of such workhouse, to and for his or their benefit; but otherwise such person or persons shall cause the

stall board, basket, cask, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, horse or horses, asses or mules, or any materials and things so seized, to be removed to any place appointed for the reception thereof in any such parochial or other district, if any such there be, and otherwise to such place or places as he or they shall judge convenient, giving parole or written notice of such place or places whereunto the same shall be removed, unto the owner, driver, or other person having any interest in the goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriages, horses, asses, mules, materials, or other things so seized or removed, if he, she, or they shall be then and there present; and the same shall be there kept and detained until such owner, driver, or other person interested therein as aforesaid shall cause to be paid the said penalty, together with the charges for taking or removing the same, and of keeping such horse or horses, asses or mules, if any; and in case the goods, carriage, horses, materials, or other things so removed (not being perishable or articles of food) shall not be claimed, and the said penalty and charges be paid, within five days next after such removal thereof, then and in every such case it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or their surveyor of the pavements, or any other person to be appointed by the said commissioners or trustees or other persons as aforesaid, to order the same to be appraised and sold; and the overplus of the money arising by such sale shall be returned to the owner or owners thereof, if he or they shall have given such notice as aforesaid, after deducting the said penalty, and such costs, charges, and expenses attending such seizing, removing, keeping, appraising, and selling the same, as the said commissioners or trustees or other persons as aforesaid, or any surveyor of the pavements in any parochial or other district, shall ascertain and allow.

For the removal of nuisances and annoyances, a repetition of notices unnecessary.

LXVI. And be it further enacted, that in all cases where by this Act, or by any local Act or Acts of parliament relating to any parochial or other district within the jurisdiction of this Act, it may be directed, required, and provided that any person or persons setting or placing any stall board, chopping block, basket, wares, merchandise, pipe, barrel, cask, or vessel, goods, timber, stones, bricks, lime, or any other materials, matters, or things, or causing or procuring the same or any of them to be set or placed upon any of the carriage or foot pavements or otherwise, contrary to the regulations herein or in any such local Act or Acts contained, in any of the streets or public places within the jurisdiction of this Act, or that any person or persons driving or placing any coach, cart, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, in or upon or over any of the foot pavements

in any streets or places within the jurisdiction of this Act, or causing or procuring the same to be so driven or placed, shall have notice and be required to remove the same previous to such person or persons being subject or liable to the penalty or penalties imposed by virtue of such local Act or Acts or of this Act, and to the seizure, forfeiture, appropriation, appraisement, or sale of any such goods, materials, matters, and other things, coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, in manner directed by such local Act or Acts or by this Act, then if any person or persons shall set or place any goods, materials, matters, or other things, or shall set, place, or drive any coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages upon or over the said pavements, or any of them, or any part thereof, at any time or times subsequent to his, her, or their having received such notice, or having been required to remove the same, or any other goods, materials, matters, or things, or any other coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages from off the said pavements or any of them, or shall cause or permit the same or any of them to be set or placed or driven by his or their servants, or by any person or persons employed by him or them; in any and every such case it shall not be necessary or requisite that any person or persons, seeing such offence or offences committed again, should require the removal of the said goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages; but the same or any of them, being so again set, placed, or driven in, upon, or over the said pavements or any of them, or any part thereof, contrary to the directions of any such local Act or Acts of parliament, or of this Act, shall and may be seized, forfeited, removed, applied, detained, appraised, and sold, in manner herein provided as to any other goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall not be removed on a requisition or notice being given so to do as hereinbefore provided; and the person or persons so committing the said offence or offences, and the owner or owners of the goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages which shall be so placed or driven, and the master or masters, employer or employers of the person or persons so offending, shall be subject and liable to the same penalty or penalties, forfeitures, proceedings, charges, and punishments, as if such person or persons offending had neglected or refused to remove the said goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other car-

riages, when required so to do, under and by virtue of any local Act or Acts of parliament, or of this Act; and although the said notices or requisitions shall not have been repeated or again given to the person or persons committing or directing or permitting such offence or offences, or any of them; anything in this Act or in any local or other Act or Acts of parliament to the contrary thereof in anywise notwithstanding.

Hog-styes and other nuisances may be removed (*a*).

LXVII. And be it further enacted, that in case any hog-stye, slaughter-house, horse-boiling establishment, or any other matter which, in the judgment of the commissioners or trustees, or other persons having the control of the pavements in any parochial or other district within the jurisdiction of this Act, is a nuisance to the other inhabitants of such parochial or other district or any of them, at any time or times hereafter shall be in any of the streets, lanes, or public places in any parochial or other district within the jurisdiction of this Act, it shall be lawful for the said commissioners or trustees, or other persons having the control of the pavements of the said streets and public places, upon complaint thereof to them made by any inhabitant, and after due investigation of such complaint, by notice in writing under the hand or hands of any of their surveyor or surveyors, or of their clerk or clerks for the time being, to order that every or any such hog-stye, necessary-house, slaughter-house, or other matter, being a nuisance, shall be forthwith remedied or removed; and if the same shall not be remedied or removed within seven days after such notice given to the owner or owners, occupier or occupiers of the premises wherein such nuisance or nuisances shall be situate, or left for him, her, or them at his, her, or their last or usual place or places of abode, or on the said premises, then every such owner or occupier so neglecting to remedy or remove such nuisance pursuant to such notice, and to the satisfaction of the said commissioners or trustees or other persons, or of their surveyor or surveyors of the pavements for the time being, shall forfeit and pay the sum of 10*l.* for every such neglect and disobedience; and also it may be lawful to and for the said commissioners or trustees, or other persons, to indict or cause to be indicted such person or persons so neglecting or disobeying any such notice, at the then next or at any future general or quarter sessions or adjourned quarter sessions of the peace, for the city, borough, or county wherein such parochial or other district may be situate, for such nuisance, or for such disobedience and offence; and such

(*a*) Compare sect. 91 of 25 & 26 Vict. c. 102, p. 316, *ante*, and sect. 92 *et seq.*, of same Act, p. 317, *et seq. ante*.

person or persons being found guilty thereof, such nuisance or nuisances shall be removed, taken down, and abated according to law with regard to public or common nuisances, or may be subject to such punishment for a misdemeanor, as the justices assembled at a general quarter, or adjourned sessions for the said city, borough, or county, may direct.

Swine not to be kept nor to wander in the streets.

LXVIII. And be it further enacted, that no person or persons whomsoever, at any time or times hereafter, shall breed, feed, or keep any kind or species of swine in any house, building, yard, garden, or other hereditaments situate and being in or within forty yards of any street or public place in any parochial or other district within the jurisdiction of this Act, nor shall suffer any kind or species of swine belonging to him or them to stray or go about in any street or public place in any parochial or other district within the jurisdiction of this Act; and that any person or persons who shall so offend, shall forfeit and pay for every such offence the sum of 40*s.*, and shall also forfeit the said swine and every of them unto the commissioners or trustees or other persons having the control of the pavements in any such parochial or other district; and that it shall and may be lawful for the said commissioners or trustees or other persons, or their surveyor or surveyors, inspector or inspectors, or any other officer or person or persons directed and appointed by them, and for any constables and headboroughs, at all times hereafter all such swine to seize, take, drive, and carry away, and sell for the best price that can be reasonably had; and the money thereby produced, after deducting all the costs and charges of and incidental to such seizure, removal and sale, to pay to the treasurer or treasurers of the said commissioners or trustees or other persons, or to such other person or persons as the said commissioners or trustees or other persons as aforesaid shall from time to time direct and appoint.

Lime not to be slacked in the streets.

LXIX. And be it further enacted, that if any person or persons at any time or times hereafter shall sift, screen, or slack, or cause to be sifted, screened, or slacked, any lime in any street or public place in any parochial or other district within the jurisdiction of this Act, or shall cause the same to be so done, without the consent of the commissioners or trustees or other persons having the control of the pavements in the streets or public places in such parochial or other district, or of their surveyor or surveyors of pavements for the time being, and without also previously erecting an hoard or inclosure, with the licence of the surveyor or surveyors of the pavements in any such parochial or other district first obtained, as directed in any local Act or Acts of parliament relating to any such parochial or other district, or in this Act,

and which hoard or inclosure shall inclose all such lime when and as it shall be sifted, screened, or slacked; then he, she, or they shall forfeit and pay for every such offence a sum not being less than 40*s.* nor exceeding 5*l.*, to be recovered in the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act.

Entrances to cellars and coalholes to be covered and secured (*a*).

LXX. And be it further enacted, that if at any time or times hereafter the owner or owners, occupier or occupiers, of any house, building, or premises, in any parochial or other district within the jurisdiction of this Act, having any iron or wooden rails or bars over the areas or openings to any kitchens or cellars or other part or parts of his or their house, building, or premises, beneath the surface of the foot pavements of any streets or public places in any such parochial or other district, or having any doorway or entrance into the basement or cellar story thereof, shall not either keep the same, or the walls of such kitchens or cellars, in sufficient and good repair, or safely and securely guard and constantly keep the same securely guarded by a rail or rails, or cover the same over with a strong flap or trap-door, according to the nature of the case, and to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or of the surveyor or surveyors of the pavements in any such parochial or other district for the time being, or of any inspectors or other officers or persons appointed by the said commissioners, trustees, or other persons as aforesaid, or some of them, and so as to prevent danger to persons passing and repassing; or if any such occupier or occupiers do or shall leave open, or not sufficiently and substantially cover and keep covered and secured to such satisfaction as aforesaid, any coal or other hole, funnel, trap-door, or cellar-flap, belonging to or connected with his, her, or their respective houses, buildings, or premises (save and except only during such reasonable time as any coals, wood, casks, or other things shall be putting down or taking out of any such vault or basement story, or during such reasonable time as the flap, trap-door, or covering thereof shall be altering, repairing, or amending); or if such owner or owners, occupier or occupiers, shall not repair, and from time to time keep in good and substantial repair, to the satisfaction of the said commissioners or trustees or other persons, or of the said surveyor or surveyors, inspectors, or other persons appointed by the said commissioners or trustees or other persons as aforesaid, all and every or any such iron or wooden rails, guard rails, flaps, trap-doors, and other covering; then and in

(*a*) See 18 & 19 Vict. c. 120, ss. 101 and 102, pp. 69, 70, *ante*.

every such case the person or persons neglecting so to do shall for every or any such offence forfeit and pay any sum not being less than 40*s.* nor exceeding 5*l.*, to be recovered in such and the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act; and that in any or either of such cases of neglect, it shall and may be also lawful to and for any two or more of the said commissioners or trustees, or other persons as aforesaid, and without the authority of any public or general meeting, or for their surveyor or surveyors of the pavements for the time being, or for their inspectors, or for any other person by such commissioners or trustees or other persons appointed as aforesaid, to cause all and every such doorways, entrances, holes and funnels to be well and securely covered over and guarded, and all iron or wooden rails, or guard rails, flaps, trap-doors, or coverings, to be well and substantially repaired or renewed, by such person or persons as they shall think proper to employ, and with such materials and in such manner as they or he may direct, and that all the costs, charges, and expenses attending the same be ascertained and certified by the surveyor or surveyors of the pavements, in any such parochial or other district, and shall be borne and paid by the owner or owners, occupier or occupiers, or other person or persons so neglecting to repair and make good the same in manner aforesaid; and that if such costs, charges, and expenses shall not be so paid by such person or persons to the said surveyor or surveyors, or to such other person or persons as he or they shall or may appoint to receive the same within twenty-four hours after an account of the costs, charges, and expenses so ascertained and certified shall have been given to or left for such person or persons at or on such houses, buildings, or premises, then double the amount of the sum so certified shall become due and payable from such person or persons, over and above the other penalties hereby imposed, and shall and may be recovered and levied in such and the same manner in which any other penalties are hereinafter directed to be recovered, or in which any monies may be recovered from any water or gaslight companies, or any other persons, for or on account of any costs and charges of relaying any pavements, by virtue of any local Act or Acts of parliament relating to such parochial or other districts, or of this Act.

Holes excavated for vaults to be inclosed.

LXXI. And be it further enacted, that if at any time or times hereafter any person or persons shall dig or make or cause to be dug or made any hole, or leave or cause to be left any hole before any vacant ground, or before or behind or on the side of any house or other tenement or building erected or being erected or about to be erected in and adjoining to any street or public place formed or to be formed or forming

in any parochial or other district within the jurisdiction of this Act, for the purposes of making any vault or vaults, or the foundation or foundations to such houses or other buildings, or for any other purpose whatsoever, and shall not forthwith inclose the same in a good and sufficient manner, to the satisfaction of the surveyor or surveyors of the pavements for the time being to the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or shall keep up or cause to be kept up and continued any such inclosure for any time which shall be longer than shall be absolutely necessary in the opinion of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, or shall not, when thereunto required by such surveyor or surveyors, or either of them, well and sufficiently fence or inclose any such hole or holes, or area or areas, or space or spaces, opened or left open, and intended for an area or areas, foundation or foundations, or for any other purpose whatsoever, in the front of or behind or on the side of such vacant ground, house, or other tenement or building in and adjoining to any such street or public place formed or to be formed or forming, within six hours after he or they shall be required so to do by the said surveyor or surveyors of pavements, and in the manner and with such materials as he or they shall direct, and to his or their satisfaction, then and in every or any such case he or they so offending shall forfeit and pay for every such offence, and for every such refusal or neglect, any sum not being less than 40*s.* nor exceeding 5*l.*, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Encroachments and projections to be regulated (*a*).

LXXII. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, and for their surveyor or surveyors of pavements, from time to time and at all times hereafter to regulate or remove, in such manner as he or they shall from time to time judge proper, all signs, sign irons,

(*a*) See ss. 101, 102, 119, and 120 of 18 & 19 Vict. c. 120, and 25 & 26 Vict. c. 102, ss. 124, 125, *antè*; and ss. 153, 154, 156, of City of London Sewers Act, 1849, 11 & 12 Vict. c. 163. See also rules as to projections in sect. 26 of Metropolitan Buildings Act, 18 & 19 Vict. c. 122. It was decided in a case under the former Building Act, 7 & 8 Vict. c. 84, that its provisions did not authorize a projection contrary to this Act. and that a magistrate had power to order its removal; *R.* v. *Ingham*, 17 Q. B. 884. And see *R.* v. *Pratt*, 24 L. T. 235. Power to remove without compensation was held to be limited to things projecting over the public way, and not to extend to the railings of the area of a house. *Bowyer* v. *Miles*, 1 B. & Ad. 38.

sign posts, and other posts, sheds, penthouses, spouts, gutters, steps, stairs, cellar doors, bow and other windows, projecting over any part of either of the footways or carriage-ways of any of the said streets or public places, window shutters, stumps, shades, rails, pales, palisades, porches, bulks, show glasses and show boards, pools, cesspools, cisterns and reservoirs for water, and all other or any fixed or moveable projections, on hinges or otherwise, from the fronts or sides of any house or houses or other buildings, and now affixed or belonging to, or which shall be hereafter affixed or belonging to any house or houses or other buildings in or abutting upon or contiguous to any streets or public places in any parochial or other district within the jurisdiction of this Act, or to the owner or owners or occupier or occupiers of any such houses or other buildings, and which in the judgment of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, then do or may obstruct the circulation of light and air, or are inconvenient or incommodious to any passengers along the carriage or foot ways of any of the said streets or public places of or within the jurisdiction of this Act, or any part thereof, or to any inhabitants of such parochial or other district; and that the same, and all the roofs, cornices, eaves, and penthouses of or belonging to such houses or buildings respectively, and all water pipes or trunks affixed or belonging or to be affixed or belonging to any such houses or other buildings respectively, shall from time to time and at all times be regulated, removed, placed, and altered by the owner or owners or occupier or occupiers of such houses or other buildings respectively, as in the judgment of the commissioners or trustees or other persons as aforesaid, or their surveyor or surveyors of the pavements for the time being, shall be necessary or desirable for the public convenience; and that in case any person or persons owning or occupying any house or houses or other buildings in or abutting upon or contiguous to any streets or public places in any parochial or other district within the jurisdiction of this Act, on being required by any notice signed by any three or more commissioners or trustees or other persons having the control of the pavements in the parochial or other district within which the said house or houses or buildings may be situate, or by their surveyor or surveyors of pavements for the time being, given to or left for such person or persons, or any of them, in or at or upon the said house or houses or other buildings or any of them, or at his or their usual or last known place or places of abode, shall not from time to time and at all times immediately either entirely remove or alter, to the satisfaction of the said commissioners or trustees or other person having the control of the pavements in any such parochial or other district, or of

their surveyor or surveyors of the pavements for the time being, any signs, sign irons, sign posts, and other posts, sheds, penthouses, spouts, gutters, steps, stairs, cellar doors, bow and other windows, window shutters, stumps, shades, sun blinds, awnings, rails, pales, palisades, porches, bulks, show glasses and show boards, pools, cesspools, cisterns, and reservoirs, or other things then fastened or affixed, or belonging to or connected with any such house or houses or other buildings, and all other fixed or moveable projections or things projecting from the fronts or sides of, or added or appendant or belonging to any house or houses or other buildings, or to the owner or owners or occupier or occupiers of any such house or houses or other buildings, over any footways or carriageways of any streets or public places within the jurisdiction of this Act, or any part, or any of them, and the roofs, cornices, eaves and penthouses, waterpipes or trunks, affixed or to be affixed, or belonging or to belong unto or connected with any of such houses or buildings respectively; then and in every such case any and every such person or persons refusing or neglecting immediately so to do, to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of the pavements for the time being, shall for every such offence, and upon every such refusal or neglect, forfeit and pay a sum not being less than 40*s.* nor exceeding 5*l.*, and which may be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Slop to be carried only in covered carts.

LXXIII. And be it further enacted, that if any person or persons at any time or times hereafter shall drive or cause to be driven any cart or other carriage with any soap lees, night soil, ammoniacal liquor, slop, filth, or channel mire or dirt therein, through or in any of the streets or other public places in any parochial or other district within the jurisdiction of this Act, without such cart or other carriage having a proper covering or boards called flash boards, to prevent the same from slopping or spilling in any of the said streets or other public places; or shall at any time or times hereafter drive or cause to be driven any cart or other carriage with any soap lees, night soil, or ammoniacal liquor therein, through or in any of the streets or public places in any parochial or other district within the jurisdiction of this Act, between the hours of six of the clock in the morning and eight of the clock in the evening of any day; or shall fill any such covered cart or other carriage, so as to turn over or cast any soap lees, night soil, ammoniacal liquor, slop, mire, or channel dirt or filth, in or upon any of the said streets or other public places: it shall and may be lawful for any person or persons whomsoever to seize and apprehend and to assist in seizing and apprehending

the offender or offenders, and by the authority of this Act, and without any other warrant or authority, to convey him or them before some justice of the peace for the city, borough, or county wherein such parochial or other district shall be situate; and which justice is hereby authorized and required to hear evidence and determine upon such offence; and every person so offending shall for every such offence forfeit and pay the sum of 5*l.*, to be recovered in the same manner as other penalties are hereinafter directed to be recovered by virtue of this Act: Provided always, that in case the person or persons so offending cannot be apprehended, then the owner or owners of such cart or carriage in which such soap lees, night soil, ammoniacal liquor, slop, filth, mire, or channel dirt shall be put or placed, and also the employer or employers of the person or persons so offending, shall be liable to and shall forfeit and pay such penalty as aforesaid, to be recovered as aforesaid.

Certain nuisances fineable.

LXXIV. And be it further enacted, that if any person or persons at any time or times hereafter shall empty or begin to empty any bog-house or bog-houses, or to take away any night soil from any house or houses or premises within the streets or other public places in any parochial or other district within the jurisdiction of this Act, or shall come with carts or carriages for that purpose (save and except between the hours of twelve of the clock in the night and five of the clock in the morning from Lady-day to Michaelmas in every year, and between twelve of the clock at night and six of the clock in the morning from Michaelmas to Lady-day in every year); or if any person or persons shall put or cast or cause to be put or cast out of any cart or tub or otherwise any night soil in or near any of the streets or other public places in any parochial or other district within the jurisdiction of this Act, it shall be lawful for any constables, headboroughs, patrols, beadles, or watchmen (and they are hereby strictly charged and required and directed so to do), or for any other person or persons whomsoever, without any warrant or other authority than this Act, to apprehend and carry any person or persons guilty of the said offences, or either of them, to any watchhouse of the parochial or other district wherein such offence shall have been committed, or to any other place of confinement or security, and from thence to convey him, her, or them, as soon as conveniently may be, before some justice of the peace, for the city, borough, or county wherein such parochial or other district shall be situate, who (upon oath or affirmation made of such offence or offences as aforesaid) shall commit every such offender or offenders to the house of correction for the same city, borough, or county wherein such parochial or other district shall be situate as aforesaid, for any

time not exceeding thirty days, to be computed from the day of commitment; and the owner or owners of any carts, carriages, horses, or beasts employed in and about emptying or removing such night soil, or coming for that purpose (save and except within the hours hereby allowed), or the employer or employers of any person or persons who shall so put or cast out any such night soil, shall forfeit the sum of 5*l.* for every such offence; and any person or persons may seize such carts or carriages, or the horses or beasts drawing the same, with the gears, harness, and accoutrements, and remove or take such carts or carriages, horses or beasts, to such place in the said parochial or other district, as may be appointed for such or similar purposes, if any such there be, or otherwise to such place or places as the surveyor or surveyors of the pavements of such parochial or other district shall order and direct, there to be detained until the owner or owners, employer or employers, shall pay the said penalty, together with all costs, charges, and expenses incurred in and about or relating to the seizure, removing, and keeping the said carts or carriages or horses, or in any manner incident thereto; and in case the same shall not be demanded, and the said penalty, and all such costs, charges, and expenses, to be ascertained and determined by the surveyor or surveyors of the pavements of the said parochial or other district for the time being, and within five days next after such seizure, then it shall be lawful for such surveyor or surveyors to order the same to be appraised and sold, and the money arising therefrom shall be applied in payment of such penalty and costs, charges and expenses; and after deducting the same, the overplus, as so ascertained by the said surveyor or surveyors, may be paid to the owner or owners thereof, when he or they shall apply for the same; and also that one moiety of such penalty shall belong to and shall be paid to or among the person or persons giving information of such offences, or any of them, and apprehending the offender or offenders, and seizing, removing, and detaining such carts or carriages, and horses or beasts, as hereinbefore is authorized and directed.

Hoards to be erected but not without leave (*c*).

LXXV. And be it further enacted, that no person or persons whomsoever shall erect, place, set up, or build, in any street or other public place in any parochial or other district within the jurisdiction of this Act at any time or times hereafter, any hoard or scaffolding, or place or erect any posts, bars, rails, boards, or other thing, by way of inclosure, for the

(*a*) A ladder placed against a house for the purpose of white-washing was held not to be within this provision; *Davey* v. *Warne*. 14 M. & W. 199. See 18 & 19 Vict. c. 120, s. 122, *ante*.

purpose of making mortar, or of depositing or sifting, screening or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, or for other works, or for any other purpose, without leave or licence first had and obtained under the hand or hands of the surveyor or surveyors for the time being of the pavements of such parochial or other district, who is and are hereby required to grant the same forthwith for the purpose of making mortar, and depositing or sifting, screening, or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection specifying therein the length of time for which the same when so erected or set up may be continued, and giving such other directions respecting the same as he or they may think necessary, on being paid by every person so applying for such licence the sum of 2*s.* 6*d.*: and that if any person or persons shall erect, place, set up, or build, or cause or permit to be erected, placed, set up, or built, any such hoard or scaffolding, or any inclosure, posts, bars, or rails, or any other matter or thing for the purposes aforesaid, or for any other purpose, without the leave or licence, signed as aforesaid, of the said surveyor or surveyors of the pavements so had and obtained, or shall erect, set up, or build the same, or cause or permit the same to be set up or erected in any other manner, or to be continued for any longer time than shall be allowed or expressed in such licence, then and in either of the said cases such person or persons, or the person or persons by whom he or they shall or may be employed, shall forfeit and pay the sum of 10*s.* for every day that the same shall have been and shall be set up and continued; and also that it shall and may be lawful for the said commissioners or trustees or other persons having the control of the pavements of such parochial or other district, or for the said surveyor or surveyors of the pavements for the time being, to cause the same to be pulled down and removed, and the same and all the materials thereof, and of every part thereof, to be kept and detained until such person or persons shall and do pay to the said surveyor or surveyors of the pavements, or to the person or persons in whose custody the same shall be, all the penalties incurred by such person or persons, together with the charges of pulling down, removing, and keeping the same, to be ascertained and determined by the said surveyor or surveyors; and in case the same shall not be claimed, and the said penalties and charges aforesaid shall not be paid within the space of five days next after the pulling down and removal thereof, then it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or for their surveyor or surveyors of the pavements, to order or cause the same to be appraised and sold; and the

money arising therefrom, after deducting all the said charges, shall be paid to the treasurer or treasurers of the said commissioners or trustees or other persons as aforesaid, or to such other person or persons as they from time to time shall or may direct or appoint (*a*).

Courts may be stopped up with the approbation of two or more justices, and with the consent of the owners of contiguous property.

LXXIX. And whereas there are in certain parochial or other districts within the jurisdiction of this Act certain courts, alleys, and places which, without inconvenience to the public, might be discontinued and stopped up, and which, from their private and confined situation, and by being harbours or receptacles for filth and rubbish, are noisome and offensive; Be it therefore further enacted, that if upon the view of any two or more of His Majesty's justices of the peace for the city, borough, or county wherein such court, alley, or place may be situate, it shall to them appear that any such court, alley, or place is become unnecessary, and may, without inconvenience to the public, or to the owners of houses or tenements adjoining thereto, be discontinued and stopped up, then and in such case it shall and may be lawful to and for such justices, by and with the consent of the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in such parochial or other district, testified by writing under the hand of the clerk or clerks to such commissioners or trustees, or other persons as aforesaid for the time being, and by and with the consent of the owner and owners of the houses, lands, or tenements adjoining to four parts in five in the length of any such court, alley, or place, testified by writing under his, her, or their hand or hands, at any special session to be holden for that purpose, by order under the hands and seals of such justices, to discontinue and stop up any and every such court, alley, or place; and all such courts, alleys, and places, or such proportion thereof as may adjoin to the houses or tenements of such person who shall have so consented, shall be discontinued and stopped up accordingly, subject to appeal as hereinafter is mentioned: Provided always, that nothing herein contained shall extend or be construed to extend so as to authorize the discontinuing or stopping up any court, alley, or place, or any part or parts thereof, whereby or in consequence whereof any house, tenement, or land shall be so inclosed (unless with such consent as aforesaid) that the owner or owners thereof shall be prevented from passing freely to and repassing freely from such house, tenement, or land.

(*a*) This provision is probably superseded by the 123rd sect. of 18 & 19 Vict. c. 120, p. 85, *ante*.

Streets may be widened and improved with consent of owners.

LXXX. And be it further enacted, that for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary for that purpose, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local Act or Acts of parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets, or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or con-

tained in any local Act or Acts of parliament relating to such parochial or other district, or by virtue of or contained in this Act in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act, and the owners and occupiers of houses or buildings, and messuages or other hereditaments therein and adjoining thereto.

Corporate or collegiate bodies and incapacitated persons enabled to sell.

LXXXI. And be it further enacted, That it shall and may be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, femes covert, guardians, trustees, and feoffees in trust for charities or other purposes, committees, executors, or administrators, and all other persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert or others, and for all and every other person or persons whomsoever who are and shall be seised, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid, by feoffment, lease and release, or bargain and sale, by deed indented and enrolled in any of His Majesty's courts of record at Westminster, for such valuable consideration as shall be *bonâ fide* agreed upon for such houses, lands, tenements, or hereditaments as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be *bonâ fide* made for the purposes aforesaid, shall be good and effectual in the law to all intents and purposes; anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are unable to treat, &c., a precept to be issued for

LXXXII. And be it further enacted, that if any body or bodies politic, corporate, or collegiate, or any other person or persons seised or possessed of or interested in any such houses, buildings, lands, tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commis-

sioners or trustees or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this Act, or with any person or persons authorized by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of the person or persons so authorized by them, then and in every such case it shall be lawful for the said commissioners or trustees or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorized, directed, and required accordingly to impannel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two; and out of such persons so to be impannelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners or trustees or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in His Majesty's courts at Westminster are by an Act made in the third year of the reign of His late Majesty King George the Second, intituled "An Act for the better Regulation of Juries," are directed to be drawn; which persons, so to be impannelled, summoned, and returned as aforesaid, are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array; and the said justices are hereby authorized and empowered, by precept or precepts, from time to time as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or

Impannelling a jury.

who are to be drawn as 3 Geo. 2, c. 25, directs (a).

Jurymen may be challenged.

(a) The law relating to juries is consolidated and amended by 6 Geo. 4, c. 50, and 15 & 16 Vict. c. 76, s. 104, and 17 & 18 Vict. c. 125, s. 59.

witnesses on his, her, or their oath or oaths, touching or concerning the premises; and the said justices, if they think fit, shall and may, on the application of either party, likewise authorize the said jury to view the place or places or premises in question, in such manner as they shall direct; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings, lands, tenements, or hereditaments, and of the proportionable value of the respective estates and interest of all and every person and persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this Act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed; which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon, (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of the meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling house of such person and persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued,) shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest, in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femes covert, and persons under any other legal incapacity or disability, as all other cestuique trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and deter-

Justices, on the application of either party, may direct a view of the premises.

Jury to assess the value on oath.

Verdict of the jury, &c., to be final, previous notice being given to the parties interested.

minations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before-mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorized by them, shall have previously offered to pay as and for such value, recompense, and satisfaction; then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate, or collegiate, or other person or persons so seised or possessed of or interested in such houses, buildings, lands, tenements, or hereditaments, and so refusing to treat and agree as before-mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorized and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof: Provided always, that in all cases where any person or persons shall by reason of absence have been prevented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, &c., to be paid by such body politic, &c.

and the commissioners, &c., may retain the same out of the sum so assessed.

LXXXIII. And be it further enacted, that the said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of 20*l.*, on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully

Justices empowered to impose fines for non-attendance.

neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this Act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a copy of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid, having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

Application of compensation where exceeding 200*l*.

LXXXIV. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this Act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of 200*l*., with all convenient speed be paid into the Bank of England, in the name and with the privity of the accountant-general of the High Court of Chancery, to be placed to his account there *ex parte* the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this Act, wherein such lands, buildings, tenements, or hereditaments shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said court shall authorize to be paid, affecting the same lands, buildings, tenements, or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents

or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the court of Chancery, upon application thereto, be invested by the said accountant-general, in his name, in the purchase of 3*l.* per Centum Consolidated or 3*l.* per Centum Reduced Bank Annuities; and in the meantime and until the said Bank Annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said Consolidated or Reduced Bank Annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

Application where the compensation does not exceed 200*l.* nor less than 20*l.*

LXXXV. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank in the name and with the privity of the said accountant-general of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees or other persons as aforesaid (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and

the dividends arising thereon, may be applied in any manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the court of Chancery.

Application where the money is less than 20*l.*

LXXXVI. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than 20*l.*, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this Act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

On payment of the purchase money premises to vest in commissioners, &c.

LXXXVII. And be it further enacted, that upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this Act directed (as the case may be), the said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees, or other persons as aforesaid for the time being, in manner and for the purposes aforesaid, who shall be deemed in law to be in the actual possession thereof to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the lands, &c. at the time of such purchase, shall be deemed entitled thereto, according to such possession, unless, &c.

LXXXVIII. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the accountant-general of the court of Chancery, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any Bank Annuities to be purchased with any such money, or the dividends or interest of any such Bank Annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said court of Chancery; and the dividends or interest of

the Bank Annuities to be purchased with such money, and also the capital of such Bank Annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

The court of Chancery may order reasonable expenses of purchases to be paid by the commissioners, &c.

LXXXIX. Provided also, and be it further enacted, that where by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments to be purchased, or purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the court of Chancery, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this Act, it shall be lawful for the said court of Chancery to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of such expenses as the said court shall deem reasonable, to be paid by the said commissioners or trustees or other persons as aforesaid, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

Tenants at will, &c. to deliver possession on six months' notice.

XC. And be it further enacted, that every tenant at will or lessee for a year, or any other person or persons in possession of any such houses, buildings, lands, tenements, and hereditaments, or any part thereof, which shall be purchased by virtue and for the purposes of this Act, and who shall have no greater interest in the premises than as tenant at will or lessee for a year, or from year to year, shall deliver up the possession of such premises to the said commissioners or trustees, or other persons as aforesaid having the control of the pavements in the streets or public places in the parochial or other division within the jurisdiction of this Act, wherein such houses, buildings, lands, tenements and hereditaments, or to such person or persons as the said commissioners or trustees or other persons as aforesaid shall appoint to take possession of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees or other persons as aforesaid, or from the person or persons so authorized by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid, or the person or persons authorized

by the said commissioners or trustees or other persons as aforesaid to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments, is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorized and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods.

Mortgagees, on tender of principal and interest, to convey;

XCI. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months' interest on the said principal, by the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district, within the jurisdiction of this Act, wherein the said houses, buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other persons as aforesaid, or from

such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the lay of giving such notice, that then at the end of the said six alendar months, on payment of the principal and interest so lue, such mortgagee or mortgagees shall convey, assign, and ransfer his, her, or their interest in the premises to the said ommissioners or trustees or other persons as aforesaid, or to ich person or persons as shall be appointed in trust for them; id in case the mortgagee or mortgagees shall refuse to convey id assign as aforesaid on such tender or payment, that then interest on every such mortgage shall from thenceforth ise and determine.

On refusal, interest to cease.

XCII. Provided always, and be it further enacted, that in e the sum due upon any such mortgage or mortgages, with interest due thereon, shall amount to more than the real ie of the premises, to be ascertained as directed by this , then the said commissioners or trustees or other persons foresaid shall not be liable to pay to the mortgagee or tgagees more than such real value of such premises, so tained as aforesaid.

The mortgagees not to be paid more than the real value of premises.

XIII. And be it further enacted, that the conveyance of such estate or interest of any feme covert to the said comoners or trustees or other persons as aforesaid for the time , or any five or more of them, or any person or persons st for them, by indenture or indentures of bargain and ealed and delivered by such feme covert in the presence attested by two credible witnesses, and duly acknow-, and to be enrolled in the High Court of Chancery six calendar months after the making thereof, shall as ally and absolutely convey the estate and interest of me covert in the premises as any fine or fines, recovery veries, would or could do, if levied or suffered thereof form of law; and further, that all bargains and sales ever to be made of any such houses, buildings, lands, nts, and hereditaments, as shall be purchased by the sioners or trustees or other persons as aforesaid for the ng, by virtue and for the purposes of this Act, and as aforesaid, shall have the like force, effect, and n in law, to all intents and purposes, as any fine or covery or recoveries whatsoever would have had if suffered by the bargainer or bargainers, or any person is seised of or entitled to any estate or interest in the in trust for such bargainer or bargainers, in any r form whatsoever.

Bargains and sales to have the force of fines and recoveries.

Upon payment of principal and interest into the bank, premises to vest in the commissioners, &c.

XCIV. And be it further enacted, that upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

Monies to be paid or tendered before any use made of the premises.

XCV. And be it further enacted, that all sums of money, or other consideration, recompence, or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to the same, or paid into the Bank of England as aforesaid, before the said commissioners or trustees or other persons as aforesaid, or any person or persons authorized by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any of the purposes before mentioned in this Act.

Estates may be sold, the persons of whom they were bought having the first offer.

XCVI. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises which shall hereafter be conveyed to them in pursuance of this Act or otherwise; provided that the said freehold or leasehold estates, lands, houses, hereditaments, and premises so purchased are first offered for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid; and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as hereinafter mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively, an affidavit shall be made and sworn before a master in the High Court of Chancery, or before one of His Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respec-

tively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same was so offered; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was not agreed to, or was refused by the person or persons to whom such offer was made, as the case may be; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners or trustees or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner hereinbefore directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this Act; and the expense of hearing and determining such differences shall be borne and paid in like manner as is hereinbefore directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*); and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local Act or Acts of parliament relating to the parochial or other division over the pavements whereof they shall possess a control, or to the purposes of this Act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

Commissioners may meet and may have offices and places where strays or goods may be impounded.

CIX. And be it further enacted, that it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act, from time to time and at all times afterwards to assemble and meet together for the execution of the local Act or Acts of parliament whereby or by virtue whereof they may have been appointed, and of this Act, within their respective parochial or other district or elsewhere, and may adjourn such meetings from time to time as they shall think proper; but that one such general meeting shall be held at least once in every calendar month, and that five or more of such commissioners or trustees or other per-

sons shall attend at and be necessary to constitute every such general meeting: and the acts, resolutions, and proceedings of the majority present at such meetings shall be deemed and considered to be the acts, resolutions, and proceedings of such meetings; and that such commissioners or trustees or other persons as aforesaid may retain and employ and discharge and pay such clerks, surveyors, inspectors, and other persons, as they from time to time shall deem expedient; and also shall and may deduct and allow to themselves and to each other, and to their officers and servants, all expenses necessarily incurred in and about the execution of any local Act or Acts of parliament, or of this Act; and also shall and may from time to time purchase or rent upon lease, for a term or terms of years or otherwise, or may erect, furnish, alter or improve any houses, offices, and other places which they may deem necessary or expedient for their places of meeting, or for the transaction of their official business, or for the deposit and safe custody of their books, vouchers, and documents; and also may purchase or rent upon lease or otherwise from time to time such place or places to be called "The Green Yard," for such parochial or other district, for the reception, deposit, and safe custody of any article seized and removed by virtue of any local Act or Acts of parliament, or of this Act, within their respective parochial or other districts, or of any horses, beasts, cattle, or any animals or other things which may be found straying, or which shall be in or about any streets or public places within their respective parochial or other district, or which, according to any local Act or Acts of parliament, or to this Act, or to the common or statute law, may be impounded; and may appoint any person or persons to inhabit and take care of such houses, offices, and other places of meeting, and to have the custody and care of such books, vouchers, and documents, and to take care of and superintend such places of deposit as aforesaid; and may appoint the fees and charges which shall be paid and payable, and which may be demanded on or for the deposit and safe custody of any such articles so seized, or of any horses, beasts, cattle, animals, or other things which shall be there impounded as aforesaid; and that the same fees and charges shall be so paid before any such articles or things shall be given up or restored to any persons whomsoever, or shall and may be deducted out of the proceeds of any appraisement or sale of any such articles and things, and which may be effected thereof under and by virtue of any local Act or Acts of parliament, or of this Act.

Commissioners and surveyors may purchase lands for the purposes of this Act.

CXXII. And be it further enacted, that if any person or persons shall at any time or times hereafter in any manner

whatsoever wilfully obstruct, hinder, or molest any commissioners or trustees or any other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any surveyor or surveyors of pavements, or any other officer or officers, person or persons whomsoever, who are or shall be appointed or employed to put in execution this Act or any local Act or Acts of parliament by the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district within the jurisdiction of this Act, in the performance or execution of his or their duty, then every person or persons so offending shall for the first offence forfeit the sum of 5*l.*, and for the second offence the sum of 10*l.*, and for the third or any subsequent offence the sum of 20*l.*, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Surveyors not to be obstructed in performance of their duty.

CXXIII. And be it further enacted, that in all cases where one or more justice or justices of the peace is or are or may be empowered by law to proceed on the complaint of the commissioners or trustees, or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any of them, it shall and may be lawful for such justice or justices of the peace, and he or they is and are hereby required, to proceed on the complaint of any one of the said commissioners or trustees or other such persons, or of their surveyor or surveyors of the pavements, or of their clerk or clerks for the time being, or any of them, or of any person or persons whom they or any two or more of them by writing under their hands shall appoint for that purpose, in such and the like manner to all intents and purposes as if such complaint had been made by such commissioners or trustees or such persons as aforesaid, or any or all of them.

Justices may proceed on complaint of commissioners.

XXVIII. Provided also, and be it enacted, that neither the Act or Acts of parliament relating either exclusively to paving or repairing the pavements of the streets or public places in any parochial or other district within the jurisdiction of this Act, or relating thereto jointly with any other purpose, nor any clause, matter, or provision therein contained, shall be hereby repealed; but that the commissioners, trustees, or other persons by any such local Act or Acts of parliament vested with the control or superintendence of the pavement of the streets and public places in every such parochial or other district shall retain and may exercise all and every the powers and authorities by all and every such

Local Paving Acts of parliament not hereby repealed.

local Act and Acts of parliament conferred upon them or any of them; and that they may from time to time and at all times, either act under and upon all or any of the provisions, clauses, powers, and authorities of such Act or Acts of parliament, or under any of the provisions, clauses, powers, and authorities of this Act, as they from time to time, upon each emergency or each particular occasion, may think proper and deem most expedient; but subject nevertheless to all the provisions contained in this Act as to the appointment of surveyors of the pavement in every parochial or other district, and as to the means hereby provided for compelling the speedy and effectual reparation of imperfect pavement in all streets and public places within the jurisdiction of this Act, and the regulation and improvement of such streets, and removal and prevention of nuisances and obstructions, according to the provisions of this Act.

Not to authorise the making any thoroughfare without consent of the owner of the estate.

CXLII. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street or way, without the consent of the owner of the estate or property upon which such bars, gates, rails, or other fences, squares, streets, or ways shall be situate.

Certain provisions in the Act of the 56 Geo. 3, c. 128, not to be affected by this Act (*a*).

CXLIV. And whereas by an Act passed in the fifty-sixth year of the reign of His present Majesty, intituled "An Act to amend Two Acts made in the fifty-third year of the Reign of His present Majesty, for opening a more convenient Communication from Marylebone Park to Charing Cross and for paving the Streets to be made in Marylebone Park; and to enable His Majesty to grant small Portions of Land as Sites for public Buildings, or to be used as Cemeteries within the Bills of Mortality;" it was enacted, that it should be lawful for the commissioners for executing that Act to authorize and permit the building or erecting and making of any porticoes, arcades, and other covered ways projecting from any buildings or houses which should or might be built on the sides of the new streets, squares, circusses, ways, courts, passages, or places comprised within the provisions of the said Act, extending over any footways of the said streets, squares, circusses, ways, courts, passages, or places under the restrictions therein mentioned; and to permit the erecting or making, or continuing or suffering to remain the fronts of any houses or buildings in the said streets, squares, circusses, ways, courts, passages, and

(*a*) See new Crown Estate Paving Act, 1851, 14 & 15 Vict. c. 98.

places, in such manner as that some fronts might recede behind or advance before others, and with bow windows or other projections, and with virandas, alcoves, balconies, pilasters, columns, and shop windows, or other projections under the restrictions therein mentioned; Now therefore be it enacted, that nothing in this Act contained shall extend or be construed to extend to alter, abridge, repeal, or affect any of the said provisions in the said recited Act of the fifty-sixth year of the reign of His present Majesty contained, or to authorize or empower any surveyor of pavements or other person or persons, to remove or alter, or to require the removal or alteration of any porticoes, arcades, or other covered ways, bow windows, virandas, alcoves, balconies, pilaster columns, architectural ornaments, or other projections which have been heretofore or shall be hereafter authorized or permitted, by the commissioners for the time being for executing the said recited Act, to be made in or to any houses or other erections, which shall have been or shall or may be erected or built in any of the streets, squares, circusses, ways, courts, passages or places comprised within the provisions of the said recited Act of the fifty-sixth year of the reign of His present Majesty.

Houses, &c. within the parish of Saint Marylebone, in the line of the new street, or in Marylebone Park, to be rated at a specific sum.

CXLV. And whereas by the said last-mentioned Act it was enacted, that such of the houses, buildings, lands, and hereditaments, which were intended to be taken and used under the provisions and for the purposes of the first Act therein recited, as are situate in the parish of Saint Marylebone, and also the houses and buildings to be erected on the said lands, should for ever thereafter, in making any rates or assessments for the paving, repairing, watching, lighting, and cleansing the several streets and other places in the said parish of Saint Marylebone, be charged and assessed thereto, as being altogether and in the whole of the yearly rent or value of six thousand and eighty-four pounds, and no more; and that the same should for ever thereafter be charged and assessed and rated at the said yearly rent of six thousand and eighty-four pounds, whether the rents or values of the same should be more or less; be it therefore further enacted, that nothing herein contained shall be construed or extend to alter, repeal, or annul the provisions contained in the said recited Act of the fifty-sixth year of the reign of His present Majesty, with relation thereto; but that all such houses, buildings, lands, and hereditaments comprised within the provisions of the said recited Act of the fifty-sixth year of His present Majesty's reign, as are situate within the said parish of Saint Marylebone, shall for all the purposes of this Act be charged and assessed as being altogether and in the whole of the said yearly rent or value of six thousand and eighty-four pounds,

and no more; and that the said sum of six thousand and eighty-four pounds shall at all times hereafter, and for all the purposes of this Act, be deemed and taken to be the annual rent or value of all such houses, buildings, lands, and hereditaments; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding.

Provisions of the Act not to affect turnpike roads.

CXLVII. Provided also, and be it further enacted, that neither this Act, nor any enactment, clause, provision, matter, or thing herein contained shall extend or be construed to extend to any turnpike road or turnpike roads, or to any part of any turnpike road or turnpike roads, whether the same shall be paved or unpaved, now being in any parochial or other district within the jurisdiction of this Act, but that the same shall be completely and entirely exempted therefrom; anything herein contained to the contrary thereof in anywise notwithstanding.

Public Act.

CXLVIII. And be it further enacted, that this Act shall be deemed and taken to be a public Act, and shall be judiciously taken notice of as such by all judges, justices, and others, without being specially pleaded.

26 VICT. CAP. 13.

AN ACT

FOR THE PROTECTION OF CERTAIN GARDENS OR ORNAMENTAL GROUNDS IN CITIES OR BOROUGHS.

4TH MAY, 1863.

WHEREAS it is expedient to make provision for the better protection and charge of enclosed garden or ornamental grounds which have been set apart for the use of the inhabitants of any public square, crescent, circus, street, or other public place surrounding or adjoining such gardens or grounds in any city or borough: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Gardens in squares, &c. of fifty years standing may be freed from neglect, encroachments, &c. and vested in the metropolitan board of works or other corporate authority;

I. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for care of the same, and from the want of such care, or from any other cause, has been neglected, the metropolitan board of works, where the same is in any place under their jurisdiction, except the city of London (where the provisions of this Act shall be carried into effect by the corporation of the said city), and the corporate authorities in any other city or borough,

justices, on the request of such committee, to inquire into any byelaws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Penalty for injuring gardens.

V. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A.B. and others.

Certain provisions of 18 & 19 Vict. c. 120, to be incorporated with this Act, and to apply to penalties, &c. imposed by this Act.

VI. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Act passed in the session of parliament held in the eighteenth and nineteenth years of the reign of her most gracious Majesty the Queen, chapter one hundred and twenty, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and

11 & 12 Vict. c. 43, also to apply.

the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, shall apply to every penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales.

Act not to extend to property of the crown or to property under the management of the commissioners of works, &c.

VII. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of her crown or of her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the commissioners for the time being of Her Majesty's works and public buildings, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of parliament.

Extent of Act.

VIII. Nothing in this Act shall extend to Scotland or Ireland.

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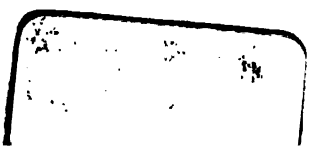
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